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ABSTRACT

As state governments realize that ignoring the child welfare status quo will victimize more children and increase state agencies' difficulties, they have begun implementing various reform ideas. Efforts to reform the family court system face many obstacles (turf battles among government agencies, inadequate numbers of attorneys, and lack of jurisdictional uniformity). Nonetheless, some significant state reforms are occurring, including expanding the jurisdiction of juvenile courts, streamlining motions and petitions, expediting appeals, and setting time limits on temporary foster care placements. States have been acting under existing law to transform virtually every aspect of family court as applied to foster care. Most jurisdictions are working to improve the quality of judicial personnel handling juvenile and foster care cases. Several states are emphasizing better use of technology to monitor compliance with state and federal laws, collect data, generate notices and orders, and schedule, track, and manage cases. Many jurisdictions are also addressing such issues as better communication and cooperation among different organizations and disciplines. A combination of better laws, more efficient delivery of social welfare services, expanded private sector role, improved court processes, and expanded community cooperation can protect endangered children, compassionately repair fractured homes, and quickly place children in permanent, loving homes. (Contains 475 endnotes.) (SM)

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BRIEFING

PACIFIC RESEARCH INSTITUTE FOR PUBLIC POLICY

Adopting Reform

The Need for Change in America's Family Court and Foster-Care System and a Survey of Reform Efforts

by Doug Bandow

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Executive Summary

There is a growing realization among state governments that leaving the child welfare status quo in place will both victimize more children and increase the difficulties of state agencies. Though largely out of the public eye, states have begun to put a range of reform ideas into practice.

Efforts to reform the family court system face many obstacles. These include turf battles among government agencies, inadequate numbers of attorneys, lack of jurisdictional uniformity, problems in interpreting and implementing federal law, and limited automation of records.

Despite the many obstacles, some significant reforms are occurring on the state level. For example, some states are pursuing the following changes:

- expanding the jurisdiction of juvenile courts and consolidating juvenile and domestic relations issues;
- streamlining motions and petitions;
- expediting the hearing process;
- ensuring representation by attorneys and court-appointed special advocates (CASAs);
- mandating lawyer training;
- defining the role of CASAs;
- expanding pretrial settlement, negotiation, and mediation;
- speeding termination and post-termination reviews;
- expediting appeals; and
- setting time limits on temporary foster care placements.

Moreover, states have been acting under existing law to transform virtually every aspect of family courts as applied to foster care. Most jurisdictions have undertaken means to improve the quality of judicial personnel handling juvenile and foster care cases.

Several states have been focusing on better use of technology, both computers and the Internet, to monitor compliance with state and federal laws, collect data, generate notices and orders, and schedule, track, and manage cases. Many jurisdictions have also been addressing a number of other issues, including better communication and cooperation among different organizations and disciplines. Means of evaluation for existing systems and reform initiatives are also being developed.

A combination of better laws, more efficient delivery of social welfare services, an increased private sector role, improved court processes, and expanded community cooperation can more effectively protect endangered children, compassionately repair fractured homes, and quickly place children in permanent, loving homes. And with the record of the past century open to examination, reformers now have a clear picture of the good for which they must aim.

By advancing court reform and welfare reform, and promoting privatization of services, policymakers can make good on their claim that they are working to improve conditions for the children. What is ultimately at stake is not the reform of a system but a better future for countless human beings.

I. Introduction: For the Children

In recent decades a wide variety of measures have been advanced as in the interests of children, often with little follow-up to gauge whether such measures lived up to promises. As this process has unfolded, the policies, institutions, and agencies that actually are for the children, family court and foster care among them, have come to face enormous problems that flow from wider difficulties in society.

The family is the foundation of civil society, but families can break down for any number of reasons, such as divorce, abandonment, accident, or bereavement, leaving children vulnerable. Some families remain intact but become abusive, sometimes as the result of drug use or criminality by parents. Dealing with the consequences of these failures is one of the most difficult but unavoidable duties any society must face. The stakes could hardly be higher.

Children, after all, are the future of any society, which will reap in long-term human costs and consequences what it sows in policy and practice. Currently, there is much cause for concern.

The foster-care system, of which family court is a part, deals with America's most vulnerable and helpless: the nation's abused, neglected, and abandoned children. When the system works, some of these children eventually return to improved families. Loving people ultimately adopt others and a number enter caring, permanent foster homes. Unfortunately, the system also leaves many languishing in a dangerous no-man's land. Unable to return to their biological parents, but also not allowed to find new families, some enter adulthood never knowing a stable home.

About 650,000 children spent at least part of 1997 in foster care, a 50 percent increase over the previous decade.[1] The number of foster-care children in the nation's largest city, New York, far exceeds the national total at any point during the 1980s. As noted in the *New York Times*, all agree that the numbers, though down slightly because of children turning 18 and leaving the system, are still by any standard "enormous and unhealthy."[2] For society, these are questions of basic justice. For children, the most vulnerable members of society, they are sometimes questions of life and death.

Children reported as abused are at about three times the risk of death as other children. There are many well-publicized cases where children have been injured or killed because of mistakes by welfare agencies or family courts. For example, in early January, 2000, the Washington, D.C. Child and Family Services Agency (CFSA) was defending itself for returning 23-month-old Brianna Blackmond and an older sister to their mother.

In June 1998, the children were removed from their home because of their mother's neglect. Courts rejected three of her attempts to regain custody of the children, whom she rarely visited. At the same time, their foster parents wanted to adopt them. But they were returned to Blackmond's custody before Christmas and Brianna was killed in early January. Police were investigating her mother and two housemates; CFSA officials disclaimed responsibility, but Brianna's attorney charged otherwise. Others pointed accusing fingers at the judge who granted Charrisise Blackmond's fourth request for custody.[3] This tragic case is hardly isolated.

Roughly 1,500 children are murdered by their parents every year, and the authorities know about half of the killers.[4] Howard Husock, whose father grew up as a foster child, observes: "Any big-city tabloid almost any week prints the by-now familiar litany of children burned, beaten, starved, or killed by parents, foster parents, or mothers' boyfriends in households supposedly under the supervision of public agencies."[5] This is not an exaggeration.

There were 3.2 million cases of alleged child maltreatment nationwide in 1997, up 1.7 percent from 1996, a sharper increase than the year before.[6] Similar is the estimate of 963,870 cases of abuse or neglect from the Department of Health and Human Services for 1997.[7] Other studies of abuse, whether reported or not, put the number at more than one million, with 565,000 cases estimated to be serious in 1993, nearly four times the number in 1986.[8]

As in the case of New York, the national numbers are enormous and unhealthy by any standard. The causes are many and varied, and frequently related to drug use. The Virginia Court Improvement Program-Foster Care reports: "Increased substance abuse by parents, particularly the use of crack cocaine; a greater number of isolated parents with fewer family resources to help care for children; more dependence by the courts and parents on foster care placements to deal with difficult children, especially teenagers; and identification of an increasing number of children who need services."[9]

These conditions pose great difficulties for the agencies involved and this study will analyze the problems and solutions in a systematic and practical way. The test for both family court and foster care is not the claim that, like so many other policies, they are "for the children," but how well they actually protect children from harm. For policymakers, the press, and the public, this is the issue, and questions abound.

How are the systems for foster care and juvenile justice coping with their mounting problems? Are the structure, methods, and incentives of these agencies, along with their enabling legislation, contributing to the alleviation of this problem? Or are there particular patterns and incentives within the current legislative, foster-care, and family-court establishments that are making the problem worse? If so, what improvements might be made, and what are the obstacles to such reform? And what broader lessons might these reforms convey, both for other institutions and the general attitude of the populace?

In considering these and other difficult questions, this study will both consider the problems and assess the reforms now in progress nationwide. It will also recommend reforms that will help the process, and ultimately improve the prospects for the nation's children, sooner rather than later. All too quickly, children become adults.

While the goal of providing better conditions and a better future for children is shared by virtually everyone, there is disagreement about the best way to accomplish those goals. At the same time, these issues and institutions remain not only difficult but unfamiliar territory for many.

An Ever-Expanding System

Illinois created the first juvenile court in 1899. It dealt with "dependent, neglected" children as well as delinquents, and intended that the state would provide assistance that approximated the care provided by parents.[10] Important precursors to modern family courts were established in New Jersey in 1912 and Ohio in 1914, though most states separated such issues as abuse, delinquency, and divorce.[11] All states now deploy extensive family courts and agencies for foster care, primarily intended to help children whose homes have become unsafe.

According to the American Public Welfare Association, about half of the children are removed from their families because of abusive or neglectful parents. In another one-fifth of the cases, parents are incapacitated in various ways. Miscellaneous causes, such as commission of a juvenile offense, account for the rest.[12]

Separate juvenile courts reflect the ways in which children differ from adults. The belief that children possess different degrees of moral understanding, and thus legal responsibility as well as practical reform ability, has led to the special handling of criminal offenses, which account for about two-thirds of juvenile proceedings. This process raises a range of issues, particularly when to treat children like adults and when alternatives to imprisonment should be employed.[13]

A separate justification for juvenile courts is that children have certain responsibilities or are subject to particular disabilities. There are a range of "status offenses," such as truancy and underage drinking, which would not be crimes for someone older. They account for roughly half of the remainder of cases. Relevant issues involve the appropriateness of offenses (curfews, for instance) and the best method of enforcement.[14] The remainder of cases involves abuse and neglect.[15]

The problem is not offenses by children, but against children. And the resolution is care, not punishment. Parents may be penalized, but not by a juvenile court, except in the sense that they may lose custody of their children. They also may receive a variety of social services as part of the state's attempt to ensure acceptable care of children at home.

Cases involving offenses against children, of particular concern for this paper, are handled in some states by juvenile courts and in other states by different courts. By 1996, reports an analysis of Ohio's program, nearly half of the states had "adopted measures that would consolidate, in whole or in part, jurisdictions that involve various family members in different legal proceedings."[16] A dozen others were considering moving in a similar direction. Other strategies include family divisions within courts or programs to coordinate resolution of family issues among different courts.[17]

Not only has the population in foster care been growing, but also states have more detailed responsibilities and their decisions are subject to more court oversight. In the early 1970s, the main functions of the court were to verify accusations of abuse or neglect and then to decide whether the child needed to be placed in foster care or under agency supervision. Today, the juvenile court continues to play an active role after a child is removed from home and maintains responsibility for ensuring permanent placement. As a result, the menu of issues facing both state welfare agencies and family courts has expanded greatly. So have the problems for those the system purports to serve.

The Culture of Delay

Two decades ago courts had only very limited authority over the decisions of social welfare agencies on the placement and treatment of children in their care.[18] A judge simply had to rule on the validity of the charges and appropriate custody.[19] Added to these decisions today, observes Mark Hardin of the American Bar Association (ABA), many courts must consider whether to provide for emergency placement outside of the family, order emergency remedies other than removing the child, approve the development and implementation of a plan for children taken from their homes, terminate parental rights, and approve adoption.[20]

During the 1970s, "removing children from, and keeping them out of, danger was the focus of the court's role in child protection," explains the Denver-based Center for Public Policy Studies. But now "courts are being asked to be responsible not only for monitoring an adjudicative process, but also increasingly for monitoring outcomes and well-being."[21] The result is an evolving judicial role and multi-level complexity.

The Adoption Assistance and Child Welfare Act of 1980, a key piece of legislation, establishes numerous procedures and deadlines to be met by states and enforced by courts. In particular, a state prepares a plan for the child and makes "reasonable efforts" to either prevent removal of a child from his or her family, or to reunite the family once a child has been removed. Courts are regularly to review the child's case and must hold a hearing to determine a permanent plan within 18 months of the child's removal. In theory, the legislation intended to promote permanence for children, though, as noted later, by favoring family reunification the law actually has tended to cause children to lan-

guish in foster care. Many states have added additional procedures and reviews and mandated even stricter deadlines, further complicating the process.

As the decisions of the courts, such as termination of parental rights (TPR), become more critical, the government has established more procedural safeguards for children and their families. Instead of finishing with one or two decisions, every foster-care case is now an ongoing monitoring process involving multiple hearings. Not surprisingly, more parties are involved in more hearings.[22]

Indeed, irrespective of the peculiarities of the individual state systems, several analysts report that "These statutory changes greatly increased the workload of the court in each abuse and neglect case it handled."[23] As a result, states have uniformly faced dramatic increases in complexity and caseload.

These, in turn, produce what has been termed in Illinois a "culture of delay," resulting from factors including: "overwhelming juvenile dockets, inadequate resources, dependence on other equally troubled branches of the child welfare system for information, demoralized court personnel, and arguably a cultural divide between children and families in the child welfare system and those who are responsible for responding to their needs in times of crisis."[24]

This litany is heard often, especially in large states with large urban populations. According to researchers in Pennsylvania, "Delays in court proceedings and in making decisions related to a child's permanent goal are typically the rule rather than the exception."[25]

Where caseloads are heavy, as they are in most states, little time is spent in any hearing. This obviously encourages judges to rely heavily upon agency recommendations and to rush their decisions. In Oklahoma, for instance, courts devoted an average of eight minutes to their hearings. All told, judges took five minutes or less in 54 percent of the cases, six to 10 minutes in 29 percent of the cases, 11 to 15 minutes in 23 percent of the cases, 16 to 30 minutes in eight percent of the cases, and more than 30 minutes in three percent of the cases.[26] Researchers reported that: "Judges and other parties interviewed on-site admitted that heavy dockets and other factors usually prevented the courts from taking sufficient time early in the process (i.e., prior to initial disposition) to determine that services might be appropriate."[27]

Average hearing times vary nationally, and contested hearings normally take longer than uncontested ones. Yet many other states have come up with similar, if slightly less shocking, results as Oklahoma.[28]

Juvenile or family courts are hardly alone in deploying inadequate resources to meet heavy caseloads, thereby yielding significant delays. The problem in the child dependency field, however, has been exacerbated by the changes in federal law and the increase in judicial responsibility. Explains the National Council of Juvenile and Family Court Judges:

> Unfortunately, many courts have neither the ability nor the resources to meet these new demands. Judicial caseloads have actually risen at the same time

that the number of issues, hearings, and parties has increased. As a result, in many jurisdictions, the quality of the court process has gravely suffered. Hearings are often rushed in child abuse and neglect cases. There are also frequent and unfortunate delays in the timing of hearings and decisions, causing children to grow up without permanent homes. Many courts know little about relevant agency operations or services. All too often, child welfare agency employees spend unnecessary hours waiting for court hearings while they could be "out working in the field."[29]

In general, courts handling dependency cases face a number of problems, including:

- whether authority over family (or at least foster care) decisions is unified in one court;
- the degree of meaningful judicial oversight, especially regarding "reasonable efforts" by welfare agencies to preserve the family;
- court caseloads, staffing levels, ill-training, and administrative, assignment, and calendar practices that promote delay;
- the adequacy of representation of all parties; and
- whether courts are otherwise family-friendly.

The difficulties extend to those on the other side of the bar.

Impaired Justice

Most lawyers in abuse/neglect actions have no particular training to represent children and lack ethical rules to help guide them in responding to challenges they will face. Indeed, their professional responsibilities to their minor clients are unclear. Overall, argue law professors Bruce Green and Bernardine Dohrn, lawyers often serve children poorly. They find this scarcely surprising since the states both assign and pay children's lawyers, whose inadequate compensation and high caseload often make it impossible to give each child's case the attention it deserves.[30]

Also critical is the quality of the legal advocates for all parties. Better representatives mean better results. Mark Hardin points to the role attorneys play in controlling the flow of information to judges and initiating actions to resolve the case. Parental representation is obviously advisable, given the complexity of the legal proceedings.

A mixture of federal and state constitutional and statutory provisions generally requires state provision of counsel for indigent parents in protective proceedings. Parents' advocates range from private attorneys to state public defenders. However, as Hardin observes, "Attorneys representing all parties in juvenile court are hampered by high caseloads, low status and pay, lack of specific training and experience, and rapid turnover."[31]

State welfare agencies obviously rely upon government attorneys to initiate proceedings against errant parents and process children through the system. The knowledge, experience, caseloads, and staff support of counsel also vary widely. The result is uneven quality that impairs both the justice and efficiency of the proceedings. Attorneys for children are often overworked and inexperienced; volunteers may be under trained and lack a sufficient knowledge of the law. Parents almost certainly suffer if they aren't represented. Public counsel for parents are often overworked and under prepared. Even government lawyers can lack sufficient experience and time to provide the best representation and achieve the best results.[32]

Although the expansion of foster care has encouraged some states to create unified family courts, their powers still vary substantially by state. For example, in its self-assessment of foster care, Missouri's Juvenile Court Improvement Project noted the expansion of its state's courts to oversight of the entire process, from removal of a child to securing a home. The courts, they also noted, became obligated to monitor family service agencies and provide procedural protections, such as the right to counsel, to children and parents.[33] This inexorable expansion of judicial responsibilities has spurred a concomitant, if not equivalent, increase in judicial powers.

Hardin writes of "a gradual but uneven trend to expand the decision-making powers of juvenile courts in these cases."[34] Despite the increasing nationalization of many issues this century, states retain significant diversity in dealing with family law issues. An element of this is a varying power to manage foster care. But expanded power and jurisdiction, along with increasing staff and budgets, are no guarantee for success or efficiency.

Inadequate staff and poor training hamper court operations. Lack of modern automated data processing and inability to track case flow hinder the sharing of information or monitoring of cases through the system. Decisions are more likely to be delayed and disjointed, with children suffering the consequences.

Adrift in the System

The government can be reasonably successful in limiting the harm to children by removing them from dangerous home environments. Typically, the social welfare agency must investigate a report of abuse or neglect, and in some states, such as Oregon, any knowledgeable party can file a petition charging child abuse. The agency must resolve the case if possible, seek an emergency hearing if it believes the child must be immediately removed from his or her home, prove at an adjudication hearing that abuse or neglect has occurred to establish its legal right to intervene, and supervise the case once a judge makes a disposition decision regarding custody and treatment.

Subsequent hearings must be held to review the case plan for the child and evaluate parental progress in meeting goals, decide on permanent placement, that is,

whether or not to return the child home, and ultimately decide whether to terminate parental rights and place the child up for adoption, or choose another placement, such as long-term foster care. A prosecutor, state or local, typically represents the agency; federal law requires the child to be provided with a guardian ad litem (GAL) to advocate his or her best interests. Additionally, the child and parents may be represented by attorneys to advocate their interests.[35]

Another key standard for assessing the system is how quickly the government places children in permanent homes once they are removed from their families.

Foster care is better than an abusive or neglectful home, but the evidence is overwhelming that a child is most likely to thrive in a stable, permanent, loving home.[36] A series of temporary placements usually badly traumatizes the child.[37] The exit into the larger world without family support is particularly jarring.[38] Thus, returning children to homes in which they can be safe and secure, or placing them in adoptive homes, benefits everyone concerned: children, birth or adoptive parents, and government.

Adoption is a particularly important outgrowth of foster care, since children who are adopted generally have, and create, far fewer problems than those who languish in the system.[39] Moreover, though government oversight and spending do not disappear once children exit foster care, the degree of attention and amount of spending fall significantly.[40] As Ann Sullivan of the Child Welfare League of America observes, adoption is "both cost-effective and outcome-effective."[41]

Foster care is supposed to be temporary. States, under court supervision, are to develop a "permanency plan" for each child. The objective may be to return to his or her family, which occurs in two-thirds of the cases. Or it may be guardianship or adoption. Unfortunately, the welfare system has had only indifferent success in moving children out of foster care into permanent, and, particularly, adoptive homes. Foster care has essentially become the permanent plan for many children. This complaint was made a quarter century ago but applies even more today.[42]

The Children's Rights Project of the American Civil Liberties Union estimated that 10 percent of children in foster care remain in the system for more than 7.4 years. One-fourth remain in foster care for more than 4.3 years.[43] Those expected to be adopted still average four to six years in foster care.[44] At the same time, the trend is toward more placements; as of 1990, fewer than 43 percent of children spent time in just one home.[45] One out of 14 children ends up in at least seven different placements.[46]

The result of being "adrift," as Wellesley College sociologist Brigitte Berger puts it, is that children "are thus not only cut off from their natural parents but also from the officials responsible for them."[47] Many children exit foster care only by hitting the age of 18. Indeed, the Court Improvement Project Advisory Committee for Washington, D.C. reports that "over two-thirds (67 percent) of the District's children leave foster care because they grow up, rather than because they are returned home or placed for adoption."[48] Unfortunately, re-entry after escaping from the system is also common.

Nearly a third of foster children who return to their families end up back in public care, but that may be better than the alternative. More than half of the children in families where instances of abuse or neglect were substantiated end up hurt again within two years.[49] The ultimate result is not only longer stays, but also a caseload that is 50 percent higher than a decade ago. The basic problem is that more children are entering than leaving the system. As documented in *Foster Care Dynamics: 1983–1994*, "first admissions to care have been far more dynamic than discharges."[50]

The Chapin Hall Center for Children at the University of Chicago has created a data archive covering six leading states, including California, Illinois, and New York. Although the experience of individual states is very different, they have one important feature in common. Reports the Chapin Hall Center: "The prevailing trend in all six states for more than a decade has been one of significant growth in the numbers of children receiving state-supported care."[51] Occasional short-term reductions "have been more than offset by periods of rapid growth."[52]

This failure has generated its own litigation explosion—lawsuits in a score of states have targeted social welfare agencies for failing to offer permanent placements in reasonable time. The reasons for this foster care increase are complex. After all, it is not clear that Americans have become dramatically worse parents in recent years.

On one side of the equation is entry into the system. The rise in the number of cases of abuse or neglect is staggering: estimates ran about 6,500 in 1967 and 360,000 in 1974, compared to nearly one million in 1997. Reported cases of alleged neglect/abuse have jumped from 60,000 in 1973 to more than three million in 1997. At the same time, substantiation rates have dropped in half since 1976.[53] Even more important—and less controversial—is the role of exits.[54] Almost everyone agrees that too few children leave the system.

The Texas Supreme Court Task Force on Foster Care cited as its major "Imperatives for Change" the plight of children spending years in the system. Explained the Task Force: "Children are staying in substitute care for too long"; "Children are waiting for adoption too long"; "The unlucky children wait longer"; "Children are frequently not given a sense of stability while in temporary foster care"; "High recidivism rates indicate that children often re-enter the system"; and "Progress is not apparent."[55]

In particular, far too few children in the foster-care system are adopted. In some states adoption rates are abysmal. According to the National Center for Policy Analysis, just one and a half percent of foster-care children in Pennsylvania were adopted in 1996. California, which possesses the nation's largest foster-care population, saw an adoption rate of only four percent. Few states do significantly better.[56]

Children who are eventually adopted average three and a half to five and a half years in foster care. Each year, about 15,000 reach adulthood without ever joining a family. And the delays have been growing in recent years.

The consequences of delay are serious for children. Their time horizon is different than that for adults, and the period of time is the more critical for their development.[57]

The longer their stay and the more placements in foster care, the more difficulty children tend to have in adjusting. In general, they will have greater behavioral problems and feel less secure than average children or adoptees.[58] The problems are even more striking for those who never gain a permanent home.

According to the consulting firm Westat, Inc., "Youths who leave foster care at age 18 because they are no longer eligible may experience unstable and troubled lives."[59] In particular, reports Westat: "46 percent had not completed high school, 38 percent had not held a job for more than one year, 25 percent had been homeless for at least one night and 60 percent of young women had given birth to a child. Forty percent had been on public assistance, incarcerated or a cost to the community in some other way."[60] New York City estimates that 10 to 11 percent (17 percent for women) of its homeless population has spent some time in foster care.[61]

The issue is not money, a frequent panacea offered to resolve vexing social problems. By one estimate, per-child foster care outlays exceed $21,000 annually.[62] Explains Conna Craig, president of the Institute for Children, the question "is not the level of government spending, it is the structure of that spending."[63] That is, how well are existing institutions and programs operating and what incentives are they creating?

The perverse combination of rising numbers of reported child abuse and falling substantiation rates might, in part, result from government's discretion in defining "child abuse" in particular cases.[64] Complains John M. Johnson of Arizona State University's School of Justice, "Existing definitions are imprecise and ambiguous."[65] A corollary problem is significant differences in data collection procedures.[66] The issue of definitions is more than ambiguity.

Dr. Susan Orr, a child welfare expert formerly at the Reason Public Policy Institute, observes that in recent years "what constituted child maltreatment grew to encompass evermore-expansive concepts such as emotional abuse and educational neglect."[67] As the meaning of neglect has expanded, she notes, solutions have shifted from criminal sanctions to social services in an attempt "to heal family members who have gone wrong."[68] This change appears to have had a serious practical effect.

Brigitte Berger of Wellesley notes that the most dramatic increase—a more than doubling—in rate placement in foster care occurred between 1963 and 1977, during which the conception of child abuse and neglect expanded and statistical reporting was formalized.[69] Particularly important is the role of neglect, which accounts for more than half of reported cases of alleged maltreatment, and which is more ambiguous than questions of physical and sexual abuse.[70]

The rate of neglect for substantiated cases is even higher. The undefined "other" is up to 12 percent, higher than before.[71] Some states, of course, differed. During the early 1990s, Oregon experienced a significant increase in the number of severely abused children.[72] The way agencies responded to that increase fueled other difficulties. In particular, the standards under which children are removed from their homes warrant review.

Dangerous Intervention

As Dr. Susan Orr observes, "When less than 20 percent of substantiated cases require removal from the home, the definition of child abuse and neglect is too broadly drawn."[73] Indeed, barely more than half of the cases are investigated, and most cases that are investigated in which abuse is indicated or substantiated never even make it to court, ending instead with an agreement between the state and family. The estimated share of reported cases that ends up in litigation runs from three to four percent, while the share of substantiated cases has been figured at 21 percent.[74]

Berger is not the first to warn of the danger of promiscuous intervention. A quarter century ago Stanford University Law Professor Michael Wald was advocating "a narrowing of neglect jurisdiction." Although the temptation to intervene was strong, he contended that "because legislators and judges presume the beneficence of such intervention, there is a great temptation to intervene too often, and restraints placed on the exercise of coercive state power elsewhere are minimized or disregarded in the child neglect area."[75]

The problem is not simply the harm done to the principle of family autonomy, which is important enough.[76] There are also important racial and political overtones, since the broad neglect standard appears to have a disproportionate impact on poor, minority families, particularly those headed by women. As a result, at least some intrusive intervention may result more from poverty than wrongdoing.[77] Intervening obviously has important practical consequences as well. Unfortunately, the government has no intrinsic comparative advantage in childrearing. Wrote Wald, "we really know very little about how to raise a child to make him 'healthy'—however 'healthy' may be defined."[78]

Indeed, the issue isn't simply whether state intervention is likely to improve the care of children. It is whether government action might impair their care, both of those before the court and those outside who might, nevertheless, be affected by changed parental behavior in response to wider, more intrusive government intervention. Wald worried not just about the availability of sufficient money, but also whether "we have the knowledge to intervene successfully in most delinquency or neglect cases."[79] As noted earlier, the deleterious impact of counterproductive intervention, and particularly unnecessary removal, can be substantial.[80] Unfortunately, poor foster care might end up being more abusive or neglectful than that provided by a marginal biological parent.

"The few studies that have been conducted show that rates of abuse and neglect of children in foster care may be greater than those for the general population," observes Roger Levesque, a fellow at the Center on Children, Families and the Law at the University of Nebraska.[81] Indeed, Falcon Baker, former director of Juvenile Studies for the Kentucky Crime Commission and director of Delinquency Prevention Programs for the Louisville public school system, complains that "Disturbing studies indicate that a foster home placement often proves more damaging than keeping the child with its biological parents, or parent, even though they are morally irresponsible and psychologically unstable."[82]

The potential for harm has only grown as welfare rolls have risen skyward with agency personnel unable to keep up in finding, training, matching, and monitoring qualified foster care parents. Despite the good intentions behind family intervention, perverse institutional incentives often warp government policies.

Perverse Incentives

"We must stop thinking that governmental actions merely represent functional responses to family problems, tending to control them," warns Arizona State University's John Johnson. "Recent empirical evidence leads us to see that governmental efforts may serve to create and sustain some kinds of problems, and specifically in the case of official interventions into family life, they may make problems worse for the individual involved."[83] He advocates due caution before the government attempts to intervene in family problems.

As Johnson and other observers are well aware, bureaucracies often develop agendas separate from problem solving. Even successful agencies and programs usually lack an incentive to reduce activity and spending.

"Even if abuse and neglect rates decline, the current structure will not wither away on its own," observes Susan Orr, "CPS [Child Protective Services] agencies will simply focus attention on less serious cases such as neglectful supervision or emotional abuse, involving more families in the child-welfare system that should not be there in the first place."[84]

Another factor in rising levels of alleged abuse may be that people are more aware of the problem of child abuse and, therefore, more ready to report potential abusers. Rising levels of drug abuse may play a role.[85] There is also the issue of requiring that suspected abuse be reported. As Susan Orr observes, "Since mandatory reports were required, reports have increased exponentially."[86]

Since there are few prosecutions for nonreporting, the impact of such mandates is not clear. However, Orr worries that mere suspicions are more likely to be reported as a result. Moreover, a family's friends and neighbors may be more likely to believe that they have fulfilled their obligation to help by making a phone call even when the behavior is not seriously abusive. In a world of limited resources, the increased number of inaccurate reports makes it more difficult for child welfare agencies to identify and respond to real problems. "The Third National Incidence Study of Child Abuse and Neglect," funded by the Department of Health and Human Services, estimates that nearly three-fourths of cases of serious abuse and neglect were not investigated.[87]

All told, the foster-care system has difficulty on both ends of the process. It likely intervenes in more cases than necessary—at least, in terms of where government actually can improve the lot of children. Second, the system has difficulty making decisions once it intervenes. As a matter of policy, it sometimes won't make a decision.

For years, the law has seemed both to discourage extinguishing parental rights and to encourage adoption, policies which can often be at odds with one another. Failure to fulfill a variety of requirements and comply with a variety of safeguards slows development and implementation of a permanent placement plan. Among the most important choke points are termination of parental rights (TPR) and adoption.

Legal Bottlenecks

The Department of Health and Human Services surveyed 11 states and concluded that, on average, states took as long as six years after a child entered the foster care system to terminate the parents' rights.[88] The vast majority of foster children is not legally eligible for adoption. And many states are unaccountably slow in allowing those children who are eligible to be adopted. Even among the few whose parents' rights had been extinguished, adoption rates in many states are disappointing.

Pennsylvania came in at less than one-fifth. Georgia's rate was one-third, while that of Hawaii was a pitiful one-tenth. In a National Center for Policy Analysis study, Conna Craig and Derek Herbert estimated that as of 1997, there were 54,000 children in foster care who were legally eligible to be adopted, but who were still waiting.[89] In many cases, legislative policy discourages effective court resolution of family cases.

For instance, Craig and Herbert point to "a federal funding scheme that compensates states for keeping children in care" and "overuse of the 'special needs' categorization."[90] The first is particularly perverse.

By reimbursing states on a per-child, per-day basis, even when children are legally free to be adopted, the federal government unintentionally encourages state governments to expand, not reduce, their foster care populations. State control over the adoption process weakens the pressure to free up foster children.

Moreover, though the Adoption Assistance and Child Welfare Act of 1980 requires states to make "reasonable efforts" to hold families together, it imposed no similar requirement to promote adoption. This legislation was interpreted by many courts to require seemingly endless attempts to reunite children with even abusive or neglectful parents.[91]

In West Virginia, for instance, a review of the state child welfare system discovered that: "System participants misperceive that extraordinary, rather than reasonable, efforts are required for the purpose of reuniting families, such that termination of parental rights is seen as the last resort, after every other possibility has failed over a long period of time."[92] Similar is the experience in Minnesota, where the state's Foster Care and Adoption Task Force reported that the vast majority of judges, county attorneys, and social workers believe "there are some circumstances where 'reasonable efforts' by the social services agency should be bypassed because it is very unlikely that reunification of the parent and child will occur no matter what efforts social services makes." Unfor-

tunately, however, "Many focus group participants believed that 'reasonable efforts' go on too long in some cases and that there is no clear guidance as to how much effort by the social services agency is enough."[93]

When states fail to provide sufficient services to abusive or neglectful families, the requirement is not satisfied. Indeed, a report by the Inspector General of the Department of Health and Human Services "found that child welfare agencies repeatedly failed to provide sufficient services and support to permit state courts to conclude that reunification was impossible and termination [of parental rights] therefore appropriate."[94]

Congress did not intend to discourage adoption; it was concerned about ending "foster care drift" and apparently did not consider the provision's impact on adoption.[95]

"We had no idea that judges would mandate exhaustive efforts at every step," admitted William Pierce, of the National Council for Adoption, who originally backed the law.[96] Such requirements made states even less disposed to speed along either termination of parental rights or placement with adoptive parents. That development was part of a largely unexamined gap between the intentions of programs, those who promote them, and the actual results.

Proclamation Versus Performance

"It has become increasingly evident in recent years," observes Brigitte Berger, " that the commitment of the modern welfare state to meet the basic needs of its people has produced a series of policies, programs, and services that are often contradictory and counterproductive." In no other area, she argues, have the policies and programs performed so poorly as in the realm of foster care.[97] Nationwide the problems are many and varied but with common threads in many states.

Delays in hearings and other procedures in the system plague Alabama, Alaska, Connecticut, New Jersey, and Hawaii where, in a majority of cases, more than one judge handled a case over its duration. In New York City, children languish in foster care for an average of 4.3 years and could wait additional years even after the filing of an adoption petition.[98] In West Virginia, deadline compliance runs less than 50 percent and fell as low as 3.8 percent for one judge. Case files were missing orders, continuances unduly delayed cases, and case flow management, court reviews, case plans, and advocacy were all inadequate.[99]

Also inadequate were court facilities in many states, along with the training provided to lawyers and poor performance by social workers. Some difficulties are more systemic.

In Nevada, for example, the same social service officials both assist and prosecute families, a situation that causes confusion. Likewise, Alaska's confrontational legal culture posed problems for foster-care issues. California needs more juvenile judges but is hardly alone in that regard. (See Appendix A for a survey of problems in all states.)

Though quick to intervene in many cases, but not always with personnel adequately trained to do so, the system overall emerges as lethargic, inefficient, and with interests of its own. The system operates under incentives that do not promote what has been shown to be beneficial for children. However, while the picture is daunting, it is not a cause for pessimism.

The problems have grown to such a magnitude that all serious observers, including those within the system, are calling for deep and meaningful reforms. The will to reform, though welcome, is not enough without some idea of how to make reforms count. In this key area, some direction is emerging. The starting point for change is to recognize that significant state autonomy is inevitable and desirable.

II. The Quest for Reform

Although the federal government may choose to set some basic goals and procedural protections nationwide, the wide differences among states justify wide variations in practice. Nevertheless, there are a number of obvious reform strategies that all states could profitably apply in broad outline. In crafting such reforms, juvenile judges should play a leading role, since they understand the problems and would be in charge of implementing the solutions.

"While the court is not responsible for the creation of services," observes one jurist, "it can convene the professionals, agencies, volunteers, and community-based organizations to determine whether there are appropriate responses and services available."[100] Creative judges can act as catalysts, especially in ensuring a greater role for private organizations dedicated to helping failing families and placing endangered children in permanent, loving homes.[101]

Of particular importance:

- regularizing the role of the courts,
- creating unified family courts or streamlined juvenile courts with analogous benefits,
- devoting adequate resources to dependency-care courts,
- exploring alternatives to court contests such as alternative dispute resolutions,
- improving court administration in all of its facets,
- strengthening the quality of advocates,
- offering training to court participants,
- making judicial facilities more family-friendly, and
- improving cooperation among various parties and agencies.

The most fundamental issue may be the power of judges.

Judicial Power

The federal Constitution, as well as sensible policy, requires judicial review for decisions affecting the most basic rights and liberties of citizens, which include interfering with one's family and terminating one's rights as a parent. At the same time, largely routine

administrative decisions would seem best left with agency personnel, subject to review for obvious error. Striking the right balance involves resolving several factors.

The first is the breadth of the court's responsibility. Family disputes are often multi-dimensional. Surveys by the National Center for State Courts found that roughly four of 10 families "came before the court more than once for family-related matters and generated a disproportionate number of such cases."[102]

As noted earlier, one response has been to establish unified family courts to bring together a range of related family disputes—divorce, child custody, child support enforcement, abuse/neglect—in one forum. Some states also integrate intra-family civil disputes and even criminal cases. This approach appears to be a valuable means of coordinating related cases. In its studies of New Jersey, Virginia, and Utah, the National Center for Juvenile Justice, "found strong evidence that the proportion of dysfunctional families who come to court for divorce, abuse and neglect, or delinquency was large enough to justify efforts to coordinate these matters."[103] A simpler explanation of the benefits comes from Jeffrey Kuhn, Administrator of New Jersey's family courts, who says "we seem to be onto something good for children and families."[104]

In the view of Catherine Ross of George Washington University, this "broad jurisdiction is key to being able to perform the function of a unified family court."[105] In general, unified family courts add to this broad jurisdiction an administrative structure that assigns one judge to handle all of a family's affairs. Such courts also typically incorporate specialized training and offer access to social services to meet particular family needs.[106] Nevertheless, even among formal family courts, there is great diversity in their functions, and advocates offer competing agendas for reform.[107]

So far, unified family courts remain a minority approach, adopted by about a dozen states.[108] The benefits of such an organization may fade if the unified family court lacks a separate section for child protection cases and fails to deploy sufficient priority and resources to child protection cases.[109] In contrast, states can graft some attributes of family courts onto existing organizations. As California Judge Leonard Edwards observes, "Many court systems have tried to achieve the benefits and efficiencies of unified family courts through better coordination, without changing the entire judicial structure."[110]

Indeed, the specialization inherent to juvenile courts can be an advantage, and the systems in Cincinnati, Ohio, and Kent County (Grand Rapids), Michigan, have been oft-cited as efficiently handling abuse/neglect cases.[111] For instance, the latter, "believed to be the first in the nation to make bold moves to systematically review children in placement, push to achieve permanency, and seek to ensure that at least reasonable efforts have been made to avert removal of a child or to reunify a family, created a permanency planning department in 1990."[112] The court includes specialized adoption staff, referees, hearing coordinators, and more, all of which helps speed the child through the court system into a private home.

Use of individual, rather than master, calendaring, thus ensuring that one judge handles a case throughout its life, is a particularly important technique, and is employed by states such as Montana.[113] Other strategies include allowing multiple cases involving a family to be conducted together; ensuring that court and agency personnel cooperate, particularly by sharing information, as they handle family matters before different courts; establishing a case management system which allows interested parties to learn about related actions; and developing better communication among court personnel.[114]

Whichever direction is adopted, establishment of family courts, or specialized juvenile courts, with a due emphasis on dependency cases, would be a useful step to streamline the handling of many different family-oriented cases, including abuse, neglect, and foster care. As the National Center for Juvenile Justice explains, "Family court is better described as a set of functions rather than a structure."[115]

Irrespective of the larger judicial framework, quality judges are necessary. When viewed as matters of low status, abuse/neglect litigation is more likely to garner less experienced and qualified judges. However, the complexity of such actions—the ABA's Hardin argues that "Roughly speaking, child protection cases are to the family court as homicide cases are to the criminal court"—suggests a reversal of priorities.[116] Dependency cases are relatively more important, given the potential lifetime impact of abuse/neglect and foster care, and time urgent, given a child's quick maturation. These cases warrant deployment of the best and brightest judges.

The impact of good judges is enhanced if they are only infrequently rotated through dependency cases. Expertise is inadequately gained and too frequently lost when judges are quickly moved to other areas. And frequent rotations undermine even the best system of individual calendaring, as discussed later, which seeks to ensure that one judge handles a child's case throughout its life.[117] If the judge moves on, he or she is obviously not available, whatever the calendar might otherwise indicate.

Adequate numbers of judges and staff are necessary to ensure that any judge in any system can give the cases before him or her the appropriate attention. Courts, which handle foster-care cases, require sufficient numbers of trained judges and other staff. In practice, the right number depends upon court organization and responsibility, as well as specific caseloads. Some foster-care actions, such as termination of parental rights, are administratively more burdensome than others, such as domestic violence, so staff should be hired accordingly.[118] Also relevant is the estimated desirable hearing lengths. Today, unfortunately, the number of judges seems to drive hearing length, rather than appropriate hearing lengths driving the number of judges.

There is enormous diversity among states in how they organize and staff their courts. This is inevitable, given the differences in and severity of family court judge shortages across the nation. However, skimping on court resources is likely to be costly. Inadequate numbers of judges result in delays, superficial proceedings, and poor decisions,

while inadequate numbers of support staff increase the burden on judges, making more likely delays, superficial proceedings, and poor decisions.

Litigation Alternatives

Another approach to reduce the crush of cases would be for states to explore alternatives or supplements to court hearings. One of the most important is alternative dispute resolution (ADR), which allows the parties to resolve disputes outside of the courtroom. As noted earlier, most abuse/neglect allegations are already resolved outside of the formal legal process. ADR provides a somewhat more structured alternative to today's informal negotiations. Similar, though non-binding, is mediation, which attempts to steer the parties towards a compromise settlement.[119] Both ADR and mediation seek to do more than simply reduce court time and costs.

By involving the parties, particularly the families, and discussing issues in a less confrontational setting, these strategies are more likely to develop solutions that are appropriate and sustainable. They also might help improve the problem-solving dynamic within the family and encourage families to be more responsible and self-reliant.[120] Obviously, not every case can be solved in this fashion—actions involving domestic violence for instance.[121] Nevertheless, these tactics may resolve issues without reaching a judge or speed resolution by a judge. New Jersey and other states report good results from such programs.[122]

While ADR and mediation have obvious uses in all sorts of legal cases, family group conferences (FGC) are more narrowly tailored to juvenile and particularly foster-care cases. FGC brings together family members, often including extended relatives and friends, to craft a solution, which is subject to final court approval (which is usually granted). FGC has been pioneered by New Zealand and used in pilot projects in several states, such as Michigan.[123]

Similar is Oregon's system of Family Unity Meetings that engages other family members and community members, such as ministers, to lend support. The goal is to build "solutions to family problems using the resources of the extended family and the local community."[124] This strategy builds on the growing attempt by juvenile courts to promote involvement by community organizations, using them to help identify and meet family needs. This approach is likely to vary in practice in different communities, but offers significant potential benefits.[125]

In all these important areas, judicial leadership is critically important. At the most basic level, jurists must be committed to speedy decision-making. Part of that commitment should take the form of turning one's courtroom into a model. The success of Kent County, for instance, resulted from sustained efforts to improve judicial operations, take advantage of outside assistance, and cooperate with other institutions.[126] Argues a group of legal analysts: "Every juvenile court in the country should work with local child wel-

fare agencies to improve their effectiveness in providing abused and neglected children with safe and permanent homes in a timely manner."[127] Appellate courts, too, should place a priority on the speedy review of lower court decisions, particularly those involving TPR, which will free children for adoption.[128]

In reviewing agency decisions, judges should press the welfare bureaucracy to make its own decisions speedily, reflecting the courts' commitment to judicial leadership in this area. Exactly how intrusive that review should be remains contentious.

Tensions between courts and child welfare agencies are inevitable when both "are increasingly called upon to play the awkward role of institutional substitute parent," as Bruce Boyer of Northwestern University School of Law puts it.[129] Their responsibilities overlap and legislatures often leave ambiguity (or, more positively, insert flexibility) into their relationship. Resolving conflicts between the two is more difficult because, writes Boyer, "the nature of this relationship—with juvenile courts and child welfare agencies carrying continuing and overlapping responsibilities—not only distinguishes it from the typical relationship between an executive agency and a supervising court, but it also renders the application of the traditional tools of public and administrative law to the field of child welfare awkward and ineffective."[130]

Restricting detailed judicial oversight is one strategy to resolve these tensions, essentially moving the relationship back to a more traditional agency-court relationship. In fact, some courts emphasize judicial deference.[131] Other judges are much more active.[132] Ultimately, legislatures should decide upon the appropriate boundaries of review. As one interdisciplinary group argues: "Although there is a consensus that, for highly sensitive decisions such as involuntarily taking children from their families, or terminating parental rights, courts must be involved, there is controversy as to whether courts should review case plans of child welfare agencies and to what extent." In their view, continued review is a crucial "managerial" tool that can "identify gaps and dangers in selected service approaches."[133]

In part, the case for judicial intervention rests upon the unique importance of speedy, proficient decision-making on placing children in safe, permanent homes. Such decisions at even the lowest levels warrant some review: a free society can't allow government agencies the unreviewable power to take children from their parents. As the National Council of Juvenile and Family Court Judges contends:

> Review hearings provide regular judicial oversight of children in foster care and can help judges identify inadequacies in government's response to child abuse and neglect. For example, incomplete case plans can prolong foster-care placement by failing to clearly specify what each party must do to facilitate family reunification. Agency case plans may be based on boilerplate forms that fail to adequately document a case. Solely agency staff, without the collaboration of parents or the child, may develop a plan. A plan may fail to specify agency services or particular behaviors and changes expected of the parents.[134]

Administrative Competence

The degree of review should vary depending upon the competence and efficiency of welfare agencies. As attorney Mark Hardin points out, "Judicial oversight of social service agencies came into being, at least in part, because these agencies were not doing an adequate job of protecting children and preserving families."[135] In fact, anecdotal evidence of agency failure is plentiful.[136]

Rising caseloads, and the concomitant tendency towards foster care drift, present a strong case for judicial prodding. This impetus would disappear, or at least be substantially reduced, with improved state action. Where the relevant child welfare officials demonstrate that they are better positioned, through education, training, and experience, to competently and fairly make decisions, there would be less cause for judges to second-guess agency decisions.[137]

Moreover, courts could demonstrate more flexibility in exercising their oversight function. Judge Edwards suggests that judges warn social service agencies of an impending "no reasonable efforts" finding unless they undertake specified action. In this way, he argues, "The threat of a 'no reasonable efforts' finding will have changed social service practice and benefited children and families."[138]

Less judicial intervention would also be required if agencies create a more formalized structure of review.[139] For instance, the bureaucracy could create its own review processes, with courts prepared to review the decisions but not conduct a new evidentiary hearing. The workability of this step in part depends on the relative competence of agency and court personnel, and the degree to which state law has already consigned particular foster-care decisions to the courts.[140]

Another possibility, with or without agency review, would be for welfare agencies to develop more standardized rules affecting the care of children, provision of services to families, assessments of what policies are in the best interests of the children, and decisions to terminate parental rights. Then judges would be empowered to overturn agency decisions only if they violated these rules or state or federal law and constitutional provisions. Such a determination would require a written opinion explaining the decision.[141]

Agency reform is no mean feat, especially at a time when caseloads are increasing, problems such as parental substance abuse are becoming more severe, and budgets are constrained. However, adopting some of the substantive recommendations advanced elsewhere, particularly reducing the scope of neglect cases and privatizing services, would help. Any improvement in executive administration would advance judicial administration.

Given the delays that almost inevitably accompany intensive court oversight, states should seek to improve the agency process sufficiently to decrease judicial discretion. Greater limitations on judicial discretion would not end judicial influence. To the contrary, a more streamlined process would probably strengthen the role of judges in sys-

tems where courts tend to lack specialized knowledge and make rushed decisions. As for more informal influence, observes Mark Hardin: "In addition to issuing orders, judges can influence agency performance by offering compliments, expressing concerns, making suggestions, requiring parties to appear and explain their actions, and entering findings outlining agency agreements."[142]

Even where judges are very active, competent social service agencies, public and private alike, would enhance court operations and speed decision-making. ABA evaluators of Kent County's juvenile system concluded that the "high quality" of administrative agencies was "a significant factor in the success the court has had in assuring permanency planning for children in foster care."[143]

In any case, court organization and rules obviously matter. Small changes can make a big difference. Today, even the best education, training, and experience can be wasted when judges spend only temporary duty on abuse and neglect cases. As one set of critics argues: "Handling cases involving children requires knowledge not only of statutory and case law but also of child development and of a community's system of social services and its educational and correctional institutions."[144]

The closer the oversight expected, the more knowledge of government agencies, private organizations, and the local community is required.

One Judge, One Family

Decisions are likely to be most expeditiously arrived at if a single jurist handles the affairs of a single family. This does raise some practical difficulties for family courts at their broadest. How dynamic should be the definition of family? Does it include stepfamily, co-inhabitants, and so on? Jeffrey Rubin suggests tailoring the definition to promote good case management. Moreover, in some instances caseloads and staffing may preclude such an approach, in which case Rubin proposes creating "family court teams" whereby a group of other court personnel would monitor every family's cases, and aid judges when the family's conflicts come before the courts.[145]

Even when it proves impossible to assign an entire family's affairs to one judge, states should assign foster care cases to particular jurists through direct or individual calendaring, rather than through a master calendar system, which allows different judges to run different hearings. As noted earlier, keeping the case before a single judge from start to finish is likely to add stability and speed to the case: Judges gain "a sense of ownership," encouraging them to invest more time in the case since doing so will benefit their handling at later stages.[146] In doing so, judges gain general expertise over the law and insight in the particular case. The judge knows what to expect from the parties, and the parties know what to expect from the judge. They have an incentive to obey judicial orders and not to repeat past rejected arguments.[147]

An example of such a system in operation is the juvenile courts in Kent County, Michigan, which assign the case of each child to a single judge. Thereby assembling a complete record speeds the termination of parental rights, cutting the time as much as in half.

The principle of one judge for one case also applies when judges appoint other judicial officers, referees, hearing officers, and the like. Use of subsidiary officers can free up court resources, but the National Council of Juvenile and Family Court Judges warns against shifting cases back and forth between judges and other officers, or running a full retrial on appeal to the judge.[148]

Adequate Hearings

Hearings must be serious and lengthy enough to allow a genuine review of the issues and actions before the court. There are obviously no hard and fast rules, but the National Council of Juvenile and Family Court Judges has produced a detailed analysis of what issues should be covered in the most common hearings: preliminary protective, adjudicatory disposition, review, permanency planning, TPR, and adoption.[149] The National Council suggests hearing lengths ranging between 30 and 60 minutes, depending upon the type of hearing.[150]

In general, judges need to take enough time to ensure that all parties contribute and all significant issues are addressed. Sufficient time invested early will likely reduce time demands later by resolving some issues and clarifying others, which otherwise might fester and require greater future attention. Additional hearings may no longer be needed, or may be more speedily held and concluded. In particular, TPR is more likely to be speedily granted if earlier hearings have addressed the relevant issues, such as state compliance with reasonable efforts tests.[151] Skimping on hearing time early on will create significant delays later on.

There are a host of more modest improvements that could be made in managing cases. Good judges in good judicial systems limit delays and move cases along. Promoting concurrent planning, limiting continuances, and setting and enforcing deadlines are all important steps.[152] "Pretrial and settlement conferences and the development of local rules covering discovery and related matters can also help move cases quickly," observes Hardin.[153] Yet, he complains, many of these improvements have not been used in the foster-care realm. Through both development and implementation of court rules, judges should make a sustained effort to speed along decisions in family courts.

Another important step is "time certain scheduling," rather than relying on calendar calls, to help reduce waiting time. The approach has been successful in Kent County and is backed by many of the court improvement reports. However, when hearings involve issues that are often settled, as at child welfare adjudications and dispositions, time certain scheduling can waste a judge's time.[154] Some experimentation and mixture of methods might provide the best results.

Better management and computer use also offer the promise of greatly improving court performance. Jeffrey Kuhn, who manages the New Jersey family court system, advocates "an information management system that serves as a cornerstone to case flow management tracking," and which includes:

- automatic docketing and indexing of new cases;
- identification of parties involved in cases and their relationship within each case (for cross-referencing and other purposes);
- immediate printing of complaints, petitions, protective orders, and notices;
- automated calendar management including scheduling and calendaring of court appearances for each judge;
- recording of interim/final dispositions and other adjudications;
- extensive on-line inquiry regarding cases and parties; and
- generation of statistical and case management reports.[155]

Court rules can help ensure that all participants take a more disciplined approach in expeditiously fulfilling their responsibilities (filing petitions, responses, and reports, for instance). Even more detailed forms, which list issues to be addressed and findings to be made, can yield substantive results. Observes Hardin, "Requirements for written findings, reinforced by court forms, help ensure that each issue is addressed carefully and thoroughly. The entry of written findings adds an element of discipline to the hearing, in that judges are reluctant to enter findings unless they are supported by evidence."[156]

Quality representation of all parties, as early as possible in the process, is also a must.

Quality Counsel

The issue of parental rights is serious enough to warrant counsel for parents. Decisions are likely to be better and delays fewer if important issues are fully addressed and resolved.[157] That is not always the case today. One problem is inadequate public fees. When the state cuts compensation too much to lower costs, it also lowers the quantity and quality of lawyers willing to take on child dependency cases.[158]

This, in turn, contributes to case overload. As in other areas, public lawyers, particularly prosecutors, agency counsel, and public defenders, are often overwhelmed. Unfortunately, so too are many private attorneys who handle cases of indigent parents. According to one analysis, "Newly hired prosecutors are frequently given the juvenile court as their first assignment. Defense attorneys often carry so many cases at once that they cannot adequately prepare for each."[159]

The American Bar Association has developed standards for children's counsel and urges judges to help limit attorney caseloads. Counsel in foster care cases would benefit from additional education.

Those representing children are in particular need of some specialized training; state bar associations should develop ethical rules and practice guidelines for representing children.[160] Court appointed guardians (GALs) require both training before trial and legal support at trial. Although courts must ultimately decide the case in front of them based on the best interests of the child, the views of the child should be solicited.[161]

Expanded use of court appointed special advocates (CASAs,) which are now operating in every state, is a relatively inexpensive means of ensuring more direct advocacy of children's desires, even in the absence of formal legal counsel. However, CASAs, who are typically not attorneys, are no substitute for a lawyer in a complicated action. Indeed, much of the work of volunteer CASAs is friendship and surrogate parenting, not advocacy.[162] Perhaps the most obvious need, one recognized by every state, is for additional training.

Training Participants

Judges, court personnel, attorneys and other representatives, and agency staff all need to know constitutional and legal requirements, judicial and administrative processes, family psychology and needs, and available resources and services.[163] Each discipline obviously benefits from learning more about its respective responsibilities. Cross-training, where members from different agencies and positions are brought together, is also valuable. Doing so is an important means to help participants deal with the enormous complexity of foster care litigation.[164] Many states have undertaken or are considering such initiatives.

Given the disproportionate role of families, and, particularly, children in these cases, waiting rooms and courtrooms should be designed accordingly.[165] Although retrofitting existing courtrooms may be prohibitively expensive, the needs of families should be taken into account in the construction of new facilities.

Finally, the courts should cooperate with private and public social-service agencies to ensure people's access to assistance during and, one would hope, before a family crisis occurs. For instance, counseling and mediation may be useful before parental problems lead to formal charges of abuse or neglect. Such services would also be helpful for the myriad other cases that also come before family courts.

The courts need not actually provide such services, but they could help refer people to private as well as public programs addressing such needs. Moreover, given their legal focus, family courts have a unique opportunity to encourage creation and expansion of ADR systems and volunteer programs such as CASAs.[166] State bar associations and other attorneys' groups offer an important venue for attorney education. The National Council of Juvenile and Family Court Judges has produced the widely disseminated *Resource Guidelines: Improving Court Practice in Child Abuse & Neglect Cases* and ini-

tiated a number of projects intended to improve court functioning in abuse/neglect cases, assisting families, and speeding adoption. Unfortunately, remedying the problems of family/juvenile courts is not easy.

Policy Reforms

It is a process, not a one-time measure. Though expensive, there are trade-offs. Shortening the time children languish in the system, which requires costly oversight, will free up funds for reorganizing courts, improving agency performance, and providing adequate numbers of judges, other court staff, and foster-care lawyers. But effective reforms can deliver good justice at a reasonable cost.

In Kent County, Michigan, for instance, efficient judicial processes have kept caseloads low and costs moderate.[167] Other policy reforms could also play an important part in improving the operation of the foster care system, including family courts.

On the entry side, Susan Orr argues for repealing mandatory reporting statutes.[168] Doing so would likely reduce the number of dubious cases that clutter the system, while freeing up social service resources to focus on more serious instances. One need not accept her solution to recriminalize child abuse/neglect and make investigations a matter of public record by the police to narrow the standards for state intervention.[169]

Michael Wald of Stanford University proposes a simple standard. Government should focus on the harm to the child, not the behavior of the parent. Intervention would be warranted if the harm is "serious" and, in general, susceptible to improvement through coercive intervention. The goal is "to ensure that 'state' views of childrearing will replace parental views only when the threat of harms of a magnitude that justifies the risks and costs of intervention is present."[170]

Obviously, such a strategy involves trade-offs, and some children would likely continue to suffer from poor parenting. Nevertheless, they would avoid the harm that would result from removing them from their families for less than compelling reasons. Moreover, such an approach would leave other avenues for helping parents whose child raising techniques were poor rather than dangerous. As Orr notes:

> Narrowing the scope in which the government can interfere will mean that some behavior, which is bad for children, will not be responded to by state authorities. But someone unassociated with a state authority may better aid a parent whose skills and knowledge of child development are deficient. Help from a charitable or civic association that holds no threat of harm to the family may be better received. For example, emotionally abusive behavior, such as screaming invectives at a child, may be poor parenting, but does not rise to the

> level of serious maltreatment. A mother who screams, however, may benefit from someone offering her the possibility of a day out of the house on her own by baby-sitting for her.[171]

The greatest policy challenge is to counteract the federal policies that today create perverse incentives, hindering permanent placement of foster children.

Speeding the Adoption Process

One strategy would be essentially to withdraw the federal government from what is most appropriately a local and state issue. Much of the uniformity evident in abuse/neglect definitions, reporting, and treatment results from federal lawmaking starting with the Child Abuse Prevention and Treatment Act of 1974.[172] However, the memory of poor state practices remains vivid, creating a continuing appeal of minimum federal standards. However desirable a reduction in federal micromanagement, there is little prospect of Washington yielding policy ground that it now occupies.

Federal payments should reward states that speed up the adoption process and adopt innovative reforms, particularly privatization of foster care services.[173] More fundamentally, the federal government needs to reverse the statutory bias against adoption most obviously reflected in the 1980 legislation. Congress has begun moving in that direction.

The Child Abuse Prevention and Treatment Act limited reunification requirements when a parent was convicted of a violent crime.[174] Moreover, the Adoption and Safe Families Act (ASFA) of 1997 sought to counteract the interpretative bias adopted by many states, which pushed for family reunification despite chronic abuse or neglect.[175] It requires that all abuse and neglect cases include a permanency review within 12 months of a child being removed from his or her home. Congress added additional exceptions, such as TPR having already been approved for a sibling, to the reasonable efforts requirement. Further actions, including filing for TPR, are to be taken expeditiously—states are to begin TPR proceedings if a child has been in foster care for 15 of the preceding 22 months.

More needs to be done, especially in terms of a funding system that tends to reinforce the status quo. The federal government has an important role to play: a half dozen programs provide money for children in foster care.[176] Simplest of all would be to block grant foster-care money, allowing states to use it as they believe best.[177] Nevertheless, the administration of foster care occurs largely at the state and local levels.

Where there is a reasonable chance of reuniting a family, agencies should continue to counsel, educate, and train parents to be able to care for their children. In the main, however, these services should be privatized, since, argues Susan Orr, "private agencies with performance-based contracts tend to work more effectively than state bureaucracies."[178]

States might consider separating children who face imminent danger from those who face cumulative danger. In the latter situation, which Douglas Besharov of the American Enterprise Institute estimates to account for about 80 percent of the cases, the potential harm is real but long-term. He recommends that those children initially be left with their parents and "given appropriate supervision, counseling, and/or therapy," with removal an option should there be no improvement.[179] This would avoid some unnecessary "temporary" removals that become permanent.

States should also expand the role of kinship care, whereby children are placed in the homes of relatives.[180] The 1996 federal welfare reform legislation encouraged states to give relatives a greater opportunity to care for foster children; though blood ties do not guarantee better care, they are likely to represent greater interest in the child and better possibility of maintaining important family bonds.

Most important, states should move more quickly to terminate the rights of biological parents who are incapable or uninterested in being good parents.[181] Obviously this is not a decision one should make lightly. Too great a willingness to act risks wrongly breaking apart families and placing children in worse situations.[182] Standards for intervention have an important impact on return rates, with some family problems more subject to resolution than others. Particularly important is a parent's willingness to resolve barriers to family reunification.[183] Thus, it is tempting to focus on prevention services, which include alcohol/drug treatment, anger management, and family counseling.

Concerns over inappropriate termination of parental rights would be reduced if the definition of neglect was more restricted. For instance, Keith Wiens complains that "In solving the problem of foster care drift, speedier termination of parental rights may work a disproportionate hardship on low income families. Many children are placed in temporary foster care because the parent is too poor to afford adequate housing."[184] In his view, "reunification efforts should not be abandoned after one or two years where the primary problem is poverty."[185]

That is surely the case. But this concern does not apply to cases of genuine abuse or serious neglect. Practical experience indicates that parents with specific profiles —alcohol/drug problems, mental illness, abuse by their parents, etc.—"are associated with a low probability of change and a high degree of resistance to services."[186]

For instance, a review of 16 New York parents with substance abuse problems who abandoned their children found that the goal in 13 cases was to reunify the families. Yet most parents made little progress and most of the children remained "in foster care limbo with no plans for finding a permanent home."[187] Research suggests that services such as parent training counseling, respite care, and information have only limited efficacy.[188] The result may be only to delay the child's move into foster care and ultimately a permanent placement. Researcher Duncan Lindsay is blunt: "the more rigorous the research design, the more convincing has been the evidence that these services have failed to provide significant improvements for clients."[189]

In practice, few of the more severely abused children are even returned home for a first time, and fewer still end up permanently at home.[190] As noted earlier, some of those left at or returned to the home in failed efforts at reunification end up hurt or dead.[191] Thus, it is critical to concentrate on families that seem most capable of reconstruction, while exhibiting less patience with parents in the more severe cases.[192]

Unfortunately, to the extent that reunification efforts are open-ended, current policy sacrifices the interests of children to those of biological parents, even those who have no wish to be real parents.[193] The issue is a difficult one, since parents should not be wantonly stripped of their children. But the interests of children should come before those of recalcitrant parents. One third of children returned to their families end up back in the system.[194]

States should more effectively implement permanency planning, which is based on the principle "that a child's right to a permanent, stable home should take precedence over the rights of neglectful or incompetent parents."[195] Agencies and courts should give delinquent parents less time to demonstrate parental fitness and to reclaim their children. Courts should simultaneously hold agencies accountable for assisting parents in meeting their obligations, focusing on the time when such assistance is more likely to have a beneficial effect.

If the parents fail to respond appropriately, states should begin the process of permanently placing the child in another family, preferably through adoption. TPR should be largely forward-looking, to the child's need for a permanent home and the biological parent's failure to provide one, rather than to the past and the agency's possible fault in not offering enough services or programs. It would be best to remove reasonable efforts from TPR determinations entirely.[196] Still, the obvious sensitivity over legally severing family ties is understandable and justifiable. This view of "termination [as] so solemn an act" is, reports Meryl Schwartz, an attorney with New York's Vera Institute of Justice, an important reason judges resist granting TPR.[197]

Given resistance to TPR, government could make greater use of two halfway houses. One is permanent guardianship until the age of majority, which shifts the right to custody and obligation of care. Guardians have greater authority than do foster parents, who have no legally-recognized family rights.[198] Indeed, the latter must receive court approval for many minor family decisions. Guardians do not formally supplant the biological parents, who may still maintain contact with their child. Schwartz calls this "a compromise," one that overcomes obstacles to adoption (such as resistance among some ethnic groups and relatives, and even from older children who know their parents, to adoption) while providing a permanent home.[199] Researchers with the ABA's Center on Children and the Law and the National Center for State Courts propose increased use of guardianship "to ensure that children have as many options for permanency as possible."[200]

Open Adoption

The other mid-step is "open" or "cooperative" adoption, in which the biological parent surrenders his or her formal legal rights, but retains the right to be involved in the child's life, particularly having contact with and receiving information about the child.[201] Whether this is a good strategy and for whom remains a contentious issue. Nevertheless, it, too, is seen as offering another option for permanent placement. Explained the assessment of Michigan's foster care system: "In appropriate cases, open adoption can result in a more expedited handling of a case in that parents may be more likely to consent to an adoption that allows them some continued contact with their child. This, in effect, may afford a greater number of children permanency in their lives and at the same time diminish court and attorney time spent on contested TPR trials and appeals."[202]

Nevertheless, in most cases where abuse or neglect is chronic, terminating parental rights is the right option, and should begin early, instead of waiting until a child is placed for adoption.

By the mid-1990s, states were moving to terminate parental rights more expeditiously.[203] However, difficulties remained, as is evident from reviewing the various state court improvement reports. States should consider allowing foster children to initiate TPR proceedings, especially if they find themselves languishing in the system.[204] One might, for instance, provide that opportunity for children who are of a certain age, have spent a certain amount of time in foster care, or have had more than, say, two placements.

Foster parents might also be allowed to petition to adopt their charges, at least after parental rights have been extinguished.[205] Foster parents are more competent to prove their fitness as parents, rather than the lack of fitness of the biological parents, through a TPR filing. Attorney Barbara Atwell has argued for allowing private parties to sue to enforce the Adoption Assistance and Child Welfare Act of 1980, which would theoretically allow a child in foster care to demand completion of best efforts, thereby either being reunited with his or her family, or having parental rights terminated and being made eligible for adoption.[206]

Once children are legally eligible for adoption, states should make every effort to get them into a permanent private home. The barrier is not an insufficient number of potential adoptive parents, even for "special needs" children, but insufficient children legally available for adoption.[207] The number of adoptions has been dropping, in large part because more single mothers are keeping their children and potential parents have been increasingly looking for children overseas.[208]

Broadening the Pool

States could help broaden the pool of eligible adoptive parents. In recent years the opportunity to adopt has been extended to those of more advanced age and lower income levels. There is now a serious lobbying campaign to further expand the pool to homosexuals.[209] However, the inclusion of homosexuals raises very different and important issues.[210] States should eliminate artificial restrictions on adoption, such as those based on race. These are particularly harmful in preventing minority children from gaining permanent homes.[211]

More important, states should streamline the process. Abandoned children could be immediately placed for adoption rather than put in foster care. Otherwise states should set a firm objective for placing children in a permanent home quickly, once parental rights are extinguished. Particularly important is implementing program changes to create an incentive for speedy adoption.[212]

A particularly hopeful policy would be to contract out foster care and adoption services with private, community-based agencies. States would set payments to encourage adoption placement while setting performance standards to ensure satisfactory care until placement is achieved. Bonuses could be awarded for speedy adoption.[213]

Obviously, private institutions are not without problems.[214] However, private foster care backed by private monitoring of foster children has been providing quality care in a number of states.[215] Being less rule-bound, non-government programs are better able to mimic the best of a home environment by mixing love and discipline. Moreover, as Conna Craig observes, they are more likely to have a mission. And they are more likely to be able to meet their objectives.[216] All told, writes Brigitte Berger:

> Since voluntary agencies are distinct from government, they are able to respond in different ways to different needs: They are more easily able to establish different programs based on different philosophies, and hence provide choices to their users. Individuals, parents and children alike, involved in foster care can more easily escape the welfare stigma. Voluntaristic agencies, moreover, have well developed roots in ethnic and religious communities and are hence better able to attract foster care families. At the same time, they offer families in distress some assurance that their own values and preferences are made available and passed on to their children.[217]

Strategies ranging from greater contracting out to privatization would simply build on existing reforms in a number of states. Several have begun to delegate foster care and adoption services to private agencies.[218] For example, Kansas has contracted out adoption, family preservation, and foster care services.[219] So far the reform has proved to be a success, and it is not an isolated example.

Success through Privatization

In Michigan, the Department of Social Services has increasingly relied on private agencies, which by the early 1990s handled two-thirds of foster children. According to researchers for Michigan's Mackinac Center for Public Policy, privatization provided children with better care at a lower cost.[220]

North Dakota has contracted out adoption services and created a public/private organization to promote adoption. According to Patrick Poole, of the Alabama Family Alliance, "the North Dakota adoption program has one of the highest adoption finalization rates in the country."[221]

In Wisconsin, private providers care for about one-fifth of foster care children; several counties have completely privatized welfare services. Ohio now provides more flexible capitated payments for counties to use for foster care services.

Although privatization is no panacea, it is important for policymakers to look beyond state governments for answers. Argues Berger, "A general direction of public policy should be to turn to other mediating structures if individual families are no longer able to cope, before there is a recourse to professional or bureaucratic agencies of 'service delivery,' who more often than not are the direct agents of the abstract, anonymous state."[222]

That counsel is particularly sound in light of the legal difficulties, delays, perverse incentives, and poor training characteristics of the system. For children these add up to the "culture of delay" noted earlier, and its impaired justice. Litigants wait for hearings, parents wait for their children, children wait for permanent homes. Financial costs also escalate, for taxpayers and parents alike. The greatest expense is borne by the children who spend much of their childhood in limbo. Current reforms, however, brighten their prospects.

III. Toward a Better Future for Children

State Reform Efforts in Practice

Reforms have faced political opposition, often resulting from philosophical differences, the difficulty in changing people's attitudes, turf battles, commitment to the status quo, and the belief that change is impossible. However, the American Bar Association Center on Children and the Law concluded that "inclusion and improved communication minimized much of the resistance."[223] The low status of children's courts, disagreements among litigants and other participants, bureaucratic decentralization, sparse rural populations, inadequate numbers of attorneys, lack of jurisdictional uniformity, and problems in interpreting and implementing federal law have posed additional barriers. Also cited by states were limited automation, data, funds, interest, staffing, technology, and understanding.[224]

Although it comes as no surprise that not every state has implemented every recommendation by state commissions, some significant reforms are occurring. The latest American Bar Association assessment finds significant change in a host of areas.

The federal Adoption and Safe Families Act sparked a flurry of activity in most states, which sought to conform to the new law. More relevant to juvenile or family courts, many states are considering or have approved new legislation and court rules reforming the adjudicatory process.

Among the changes or proposed changes:

- expanding the jurisdiction of juvenile courts and consolidating juvenile and domestic relations issues;
- streamlining motions and petitions;
- expediting the hearing process;
- ensuring representation by attorneys and CASAs;
- mandating lawyer training;
- defining the role of CASAs;
- expanding pretrial settlement, negotiation, and mediation;
- speeding termination and post-termination reviews;
- expediting appeals; and
- setting time limits on temporary foster care placements.[225]

Moreover, states have been acting under existing law to transform virtually every aspect of family courts as applied to foster care. Most jurisdictions have undertaken means to improve the quality of judicial personnel handling juvenile and foster-care cases.

Several states have been focusing on better use of technology, both computers and the Internet, to monitor compliance with state and federal laws, collect data, generate notices and orders, and schedule, track, and manage cases. Several have been developing websites and email systems. A few have even begun to experiment with the use of new technology, such as videoconferencing, to aid the hearing process.[226]

Finally, jurisdictions have been addressing a number of other issues. One is to promote better communication and cooperation among different organizations and disciplines. Another is to develop processes for evaluation of existing systems and reform initiatives. There a variety of others, many related to earlier topics.[227]

States realize their responsibilities in this area, and also that leaving the status quo in place will both victimize more children and increase the difficulties of state agencies. Though largely out of the public eye, states have begun to put a range of reform ideas into practice. As with the difficulties, the reforms share common threads.

Virtually all states (See Appendix B for the full state-by-state survey) seek to shake the system out of its lethargy with speedier case flow and reduced waiting time. New York is considering a constitutional amendment to streamline judicial organization. Texas and West Virginia have begun to set stricter deadlines for the disposition of foster-care and abuse cases.

Training is also an issue in many states, especially, as in New Hampshire, for part-time judges with only limited experience in foster-care cases. Michigan, the state with the most detailed set of reform recommendations, seeks the appointment of "knowledgeable counsel" before the preliminary hearing. The practice of using a single judge for a single case has been recommended for both Michigan and Hawaii, where a "one judge, one family" policy has been implemented. The hearing process has already showed improvements. But in all areas, it is important that the perfect not become the enemy of the good.

Family court reform is an issue of trade-offs involving money, time, and resources. Legislators must weigh competing needs in deciding on priorities for the judiciary as a whole, and dependency-care litigation in particular. In making these judgments, no government program deserves a blank check. Indeed, the federal and state budgets are laden with unnecessary and unnecessarily wasteful expenditures.[228] Social welfare programs are no exception.

In reforming abuse/neglect litigation and services, government should seek to save money when and where it can. But the fundamental objective should be to develop a system that delivers basic justice, and then to work to ensure that it does so in the most cost-effective manner.

On the substantive side, lawmakers should address the legal definition of neglect and reasonable efforts requirements. Legislators and administrators should conscientiously

assess the efficacy of different services and cut those that offer little benefit. Moreover, service provision, particularly for adoption, should be turned over to private institutions. Such reforms are likely to reduce government intrusion in families' lives while more quickly moving abused and neglected children into permanent homes.

Equally important are procedural reforms. Creation of unified family courts, to handle the complex mix of legal actions that typically afflict troubled families, is an appropriate goal. States unwilling or unable to go so far can achieve similar results through judicious reforms of existing juvenile or civil courts: more and better trained judges, improved assignment and scheduling systems, more meaningful hearings and enhanced representation of all parties, and a host of better case and data management practices.

Many of these changes could reduce costs. A greater caution in charging families with abuse or neglect, more reasonable definition of "reasonable efforts," and speedier resolution of the child's permanent status are all likely to cut outlays. Even mundane procedural reforms offer a similar benefit. Gregory Halemba and Gene Siegel, of the National Center for Juvenile Justice, assessed Arizona's juvenile courts and observed that savings in personnel times "can be realized through better calendar utilization, closer control of continuances, and more effective case flow management."[229]

Other changes are likely to increase outlays in the short-term. Hiring more judges, placing greater priority on juvenile/family cases, and offering training will not be cheap. Even here, however, additional savings might come quickly. A somewhat longer hearing early in the process might forestall the need for later hearings—ones that, today, are often continued and delayed. More fundamentally, observe Halemba and Siegel:

> Increasing the timeliness and thoroughness of judicial oversight at all hearing stages has proven to result in dramatic reductions in the amount of time children remain in impermanent living arrangements and the amount of time that the state (that is, the court, ACYF [Administration for Children, Youth and Families], and the AG's Office) remains involved in these cases. Not only does this benefit children, the savings to the state can potentially be enormous.[230]

Policymakers need to keep in mind that, while the costs of fixing the system are high, the costs of leaving the status-quo in place are also high, and unacceptable. This study has covered a number of problems and offered detailed reforms but, as these are considered, some larger issues must be kept in mind.

IV. Applying the Lessons

Our current difficulties are an eloquent treatise that government is a poor parent, despite the trillions in social spending since the days of the Great Society. Social problems not only persist, but in some cases are worse. That reality should give legislators pause about unreflective attempts to make government the problem solver of first resort. Reformers must resist the utopian temptations that have driven so many counterproductive welfare-state policies.

When private agencies show themselves to be capable of outperforming government bureaucracies, they should be given the opportunity to perform. While the foster care and family court systems cannot be made perfect, they can be improved to the point that they are part of the solution, not the problem. Children should not be put in further jeopardy while under their jurisdiction. As in the medical profession, the system should first do no harm.

A combination of better laws, more efficient delivery of social welfare services, an increased private sector role, improved court processes, and expanded community cooperation can more effectively protect endangered children, compassionately repair fractured homes, and quickly place children in permanent, loving homes. And with the record of the past century open to examination, reformers now have a clear picture of the good for which they must aim.

Despite current difficulties, there is ultimately no substitute for the family. Children need loving families if they are to grow into responsible adults and parents themselves. Legislators can bolster reforms of foster care and family court by promoting policies that strengthen families.

By now, the destructive folly of rewarding young women for having children out of wedlock should be apparent. Any welfare reform worthy of the name should eliminate that practice and instead reward marriage. It would also be both practical and prudent to eliminate the tax biases that penalize people for getting married. The greatest expense for many families is not food, shelter, or tuition but taxes, and tax relief would reinforce the family unit by reducing the need for two-earner families and empowering parents to provide resources for their children. Providing parents with more control over the education of their children would also help. So would policies that facilitate working at home, particularly for women.

Court reform and welfare reform should move forward together, serving a common goal. It would be tragic if this became a partisan or back-burner issue because what is ultimately at stake is not the reform of a system but a better future for countless human

beings. While many challenges remain, these issues give policymakers a chance to make good on their claim that they are for the children. For the children, legislators, and society at large, there will be no escaping the consequences.

Appendix A: A National Survey of Family Court and Foster Care Difficulties

Alabama. After surveying judges, assessing case files, observing court cases, and interviewing participants, the state's court improvement project report raised a number of concerns about existing juvenile court procedures. Although judges generally docketed cases in a timely fashion, potential problems included delays in emergency shelter hearings, unexplained continuances, lack of diversity in docketing and calendaring procedures, and incomplete case files. In some counties, more caseworkers and GALs were needed, and courtrooms lacked sufficient waiting rooms and facilities for children. Courts failed both to provide uniform treatment of case plans and to consistently follow established procedures in conducting hearings. Concerns were raised that interested parties received insufficient notice about proceedings, some parties went unrepresented, and others were underrepresented by overworked, inexperienced attorneys and GALs. Judges did not always actively oversee the provision of services to families or make explicit determinations regarding the state having made a "reasonable effort" to preserve the family or what steps were in the "best interests" of the child. A consensus of those surveyed backed additional training for all participants.[231]

Alaska. Various problems were identified. Judicial oversight was hampered by appellate opinions limiting the power of trial court judges to make placement and treatment decisions, the judges' general philosophy of noninterference, and insufficient hearing time for serious review. Case management was inconsistent and sometimes inadequate. Delays resulted from action, or inaction, by social welfare agencies, the state attorney general's office, and parties who, for instance, failed to get treatment. Scheduling problems and a confrontational legal culture posed other barriers. Court-related delays were particularly important: dependency cases were calendared along with priority criminal cases and other civil and domestic actions; hearings were too frequently rescheduled; lawyers were forced to juggle conflicting cases; and multiple parties made scheduling more difficult. Judges rarely reviewed reasonable efforts. Court facilities offered too few meeting and waiting rooms.[232]

Two researchers involved in the court improvement project independently offered their own assessment the state's handling of foster care cases. They concluded that: Children in Need of Aid (CINA) actions did not receive proper priority; statutes, rules, and procedures were scattered and hard for nonspecialists to learn; local procedures were both complex and different, limiting practice areas; scheduling was difficult; judges often found the cases unpleasant and rarely volunteered to handle them; and other parties and actors often put their interests ahead of those of the children. Moreover, notice was often insufficient; hearings began late; judges held very short, multiple review hearings, which avoided basic case planning issues; adjudication was often delayed and

times varied by locality; reports were often not filed; judges rarely held permanency planning hearings; and the Citizen's Foster Care Review Panel was viewed as unnecessarily duplicative by some.[233]

The handling of abuse/neglect cases was also obviously affected by the actions of other agencies, such as the overloaded Division of Family and Youth Services and Attorney General's office, as well as GALs, who endured an equally heavy caseload. The analysts advocated additional resources for these participating institutions as well.[234]

Arizona. This state's review concluded that "A primary concern that resonates across a wide variety of data collected during the course of our assessment is that children adjudicated dependent often remain in out-of-home placements for extended periods of time."[235] Concerns were expressed over management of the case flow, timing of important hearings, especially leading up to TPR, service delivery to families, and judicial oversight of service delivery. Other problems included excessive waiting times and caseworker turnover, lack of timely filings of severance (TPR) petitions, and problems in finishing required assessments and reports. Difficulties with case flow included too few judges and court staff, inadequate docket time, heavy caseloads and backlogs, excessive continuances, and multiple hearings scheduled at the same time.[236] Concerns over timeliness topped those of fairness or thoroughness, and were greatest in severance proceedings.[237] Lack of training was another concern.[238] So was lack of necessary services, which the evaluators admitted was not, strictly speaking, a court matter.[239] Generally, these problems were evident when the researchers studied five counties in detail.[240]

Arkansas. The Arkansas Supreme Court Ad Hoc Committee on Foster Care and Adoption Assessment issued a total of 46 findings. For instance, it concluded that training "touched nearly every other issue the Committee considered, yet very little training was available for attorneys in juvenile issues."[241] Parties did not consistently address reasonable efforts issues nor did judges make reasonable efforts findings. Services for families were insufficient and often inaccessible. Case plans sometimes were not developed with the input of people close to the child, often were not addressed in court, and need not even be filed with the court. Representation of both children and parents was often inadequate. The state failed to identify some putative parents and send notices to parties in a timely fashion. Little information was presented at hearings and court orders were not filed in a timely manner after hearings. Additional statutory guidance was necessary regarding the purpose of six-month reviews. TPR and adoption proceedings took too long. "Voluntary placements" should be restricted. Court facilities were inadequate. The state's weighted caseload system was flawed.[242]

California. The state assessment project mixed public hearings and focus groups with a study by the National Center for State Courts. Problems included too few juvenile

judges, failure to utilize such practices as family group conferencing and mediation, lack of notice to incarcerated parents, failure to include children in hearings, insufficient case data, and inadequate facilities.[243] Many courts failed to meet statutory hearing deadlines, frequent continuances were a problem, cases remained open too long, courts employed a mix of scheduling strategies, case plans and reports were filed late, and reasonable efforts determinations were not always made. Accelerating permanency planning would be beneficial and ADR is relatively new to California dependency litigation. Foster care payment policies encouraged courts to leave some cases open, there were too many post-permanent and post-disposition reviews, judges requested additional training, judicial selection and assignment were inconsistent, often leading to cases being handled by two or more judges, and additional judges were needed to reduce caseloads. California lacked statewide court information standards, representation was often absent and sometimes inadequate, lawyers sought extra training, cooperation among many courts and other participants was haphazard, and California lagged behind other states in its allocation of judicial resources to foster care cases.[244]

Colorado. In this state's court improvement report, analyst Laurie Shera pointed to inadequate timeliness and quality of court hearings, compliance with statutory deadlines, organization, and preparation as factors delaying the permanent placement of foster care children. The state's attorney contracting process discouraged effective representation of children and parents, cooperation between the courts and department of social services was inconsistent, the appellate process was unnecessarily slow, most participants in the process lacked sufficient training, and court finances and facilities were inadequate.[245]

Connecticut. Judges often failed not only to make reasonable efforts inquiry or finding, but also to devote more than five to 10 minutes to each hearing, or to issue orders regarding placement, services, and visitation.[246] The Department of Children and Families filed far more extensions of commitment than TPR, indicating "a lack of permanency for children in foster care."[247] Few judges chose assignment to Juvenile Matters and they disagreed over the appropriate assignment length. Rising caseloads and limited personnel and technological resources hampered judicial decision-making. Judicial oversight was inadequate. Training opportunities for judges varied. Notice was inconsistent and waiting time was excessive. Worries were expressed over the emphasis on mothers (to the detriment of fathers) and lack of services for minority groups. A number of courts failed to meet federal hearing and review deadlines; continuances were frequently granted. In some jurisdictions, delays were quite serious. Docketing and scheduling were inconsistent. Children's attorneys lacked time to meet with children, training opportunities, and access to expert resources and non-lawyer CASAs/GALs. Court operations were affected by the performance of the Department of Children and Families, which itself suffered from heavy caseloads and caseworker turnover.[248]

Delaware. The state assessment surveyed system participants and found a number of problems. Perhaps the most fundamental was the failure of the Judicial Foster Care Review (JFCR) "in bringing about permanency" for children. Indeed, "the scheduling of JFCRs also suggests that the JFCR primarily is regarded more as a means to secure federal funds than a means to determine permanency for a child."[249]

A number of difficulties were cited, including lack of follow-up to court orders, judicial tendency to give parents additional chances, absence of review hearings, lack of representation of parties, particularly children, and failure to discuss satisfactorily important issues, such as placement, at the hearings which were held. Heavy caseloads, long waits for hearings to start, poor treatment of caseworkers, and inadequate facilities were also cited. Moreover, a number of inconsistencies in court forms, procedures, and file management were noted, which encouraged delays and impeded reliable acquisition of data.[250] In some cases, the problem is fundamental: "Laws and court rules are incomplete at best, and totally silent in most cases."[251] A later analysis cited similar difficulties. State courts often held adjudication, but not disposition, hearings. Newer judges lacked knowledge of abuse and neglect issues. Many parents went unrepresented in cases. Waiting times could be reduced.[252]

District of Columbia. The District's problems have been particularly dire, given its desperate financial straits. In mid-1997, the Court Improvement Project Advisory Committee warned that "the agency remains in receivership under a second receiver and child welfare in the District of Columbia continues to be in crisis," with children spending three times the national average in foster care.[253] Among the problems acknowledged by the District were the need to reduce delays for existing cases and the lack of data links between the courts and child welfare agencies.[254]

The detailed assessment by the Court Improvement Advisory Committee reported that "the processing of abuse and neglect cases takes an extraordinarily long time."[255] The Committee found that the District of Columbia exceeded the federal deadline for the holding of a dispositional hearing, as well as the guidelines of the federal government and National Council of Juvenile and Family Court Judges for adjudication after the initial hearing and the filing of a TPR. Lawyers and social workers often did not prepare reports, nor did they do so in a timely fashion. Findings as to reasonable efforts were often not included in court documents and orders. Participants needed training.[256]

Florida. The Office of the State Courts Administrator raised a number of issues regarding the operation of the state's Dependency Court System. Matters of concern included inconsistent provision of attorneys to parents, the lack of court policy for granting continuances, poor docketing practices, inadequate reports that were not submitted in a timely fashion, failure to comply with statutory timelines, poor use of GALs, inadequate and delayed case plans, and lax judicial review.[257] In the first ABA

review, issues of notice, representation, and timeliness were cited as problems, with remedial legislation proposed.[258]

Georgia. The state's juvenile court system suffered from a number of problems. Record-keeping was deficient; judges lacked case flow information which would allow them to better manage the controversies before them, contributing to "foster care drift"; additional education and training, backed by practice manuals, would improve the juvenile court process; practice standards for judges and attorneys alike would also increase court efficiency; children and parents were not always represented, or represented effectively; and judges unfamiliar with juvenile law are less likely to move foster care children quickly into permanent homes.[259]

Hawaii. Problems identified by the National Center for State Courts were not atypical. Judges usually rotated through child protective assignments too quickly and in a majority of cases more than one judge handled a case over its life. Heavy caseloads reduced time for hearings. Court officials often lacked experience in family law matters. Caseload records were not automated and court facilities were overcrowded. Some courts suffered significant waiting times. Children, even some in supposedly permanent placements, suffered from the effects of "foster care drift." Appeals took too long. Parties did not always receive quality representation. There was inadequate coordination between the courts and other parties.[260]

Illinois. Relying on studies by the Chapin Hall Center for Children, the Citizens Committee on Juvenile Court Support Fund developed its report on the operation of state juvenile courts. The Committee found inordinate delays in judicial proceedings, particularly in Cook County (Chicago), which were exacerbated by the courts' culture, practices, and procedures. Particularly harmful was the first: "Elements of this culture include tolerance for delay, excessive adversarialness, pervasive mistrust between DCFS [Department of Children and Family Services] and other court participants, and fear of negative media attention."[261]

Downstate counties endured fewer delays, but had other problems. Attorneys and judges were less well trained, parents were sometimes absent from hearings, information systems were inadequate and reporting standards were not uniform, appropriate services were inadequate, and parental rights were rarely terminated.[262] There was also a belief "that state child welfare policy too often is driven by the needs of Cook County."[263]

Indiana. The Indiana Court Improvement Project identified several problems with the foster case system: the tension between reunifying the family and providing for the child's best interest, inadequate funding for prevention, the cost of placement out of county and state, recruiting foster care parents, inadequate business participation, inconsistent definitions of delinquency, and poor cooperation between government agencies.[264]

Iowa. Several problems were evident in Iowa. A detailed analysis of compliance with "reasonable efforts" concluded that although "judges are striving to fulfill" their responsibilities and in most cases make the required determinations, "The data conflict, however, as to whether their determinations are truly meaningful."[265] Indeed, judges rarely made negative determinations even though there was evidence of "less than strict compliance with the reasonable efforts requirement."[266]

A number of failings afflicted the hearing process, including inadequate quality of and time allotted to hearings, failure of judges to review some important issues, and lack of permanency and post-termination review hearings in some cases. In terms of representation, attorneys and GALs were not always well prepared, failed to participate fully in contested hearings, and needed better training and compensation. Parents failed to gain representation early enough and caseloads of county attorneys and public defenders were too high. Judges were hampered in reaching timely decisions by docketing problems, hearing interruptions, inadequate time for reviews, inconsistent hearing practices, poor communication among participants, and reluctance to file and delays in filing TPR. Other problems included heavy court caseloads, inadequate judicial workloads, failure of parents to understand their rights, lack of consultation between parties and their lawyers, and poor notice to participants.[267]

Kansas. This state conducted a survey rather than a formal assessment. Almost all participants, ranging from judges to parents' attorneys, expressed some concern over the adequacy of information. Few detailed judgments as to specific problems were made, though there was criticism of "the reluctance or procrastination of County and District Attorneys in filing petitions for TPR. They see children who have the possibility of a permanent home become disillusioned and embittered by the system that fails their need for permanence."[268]

Kentucky. The Kentucky Court Improvement Project Evaluation Team offered a detailed critique of that state's foster care system. Only half of the judges made reasonable efforts determinations at temporary removal, adjudication, and review hearings. The majority of judges and other participants were unaware of the State Child Welfare Services Plan. Review hearings were often pro forma. In some counties, no permanency plan hearing was held. Notification practices were inconsistent. Court use of reports and case plans varied. Parents sometimes failed to appear, delaying hearings; representation of children and parents was not always adequate; and case delays and hearing waits occasioned complaint. Rotation and inadequate resources hampered judges in juvenile resources. The courts lacked an automated tracking system.[269] Some parents complained about the delay in deciding TPR, while in one court caseworkers worried that those unduly speedy proceedings left too little time to work with families.[270]

Louisiana. A number of problems were identified. Operational practices differed among courts; juvenile courts tended to take longer to process foster care cases. Factors contributing to delays included the granting of continuances and frequent changes in attorney representation of children and parents. Case files often were incomplete and included inaccurate and inconsistent terminology. Sufficient services were not always available. Cooperation between courts and welfare agencies lagged. Judges and lawyers often had little training and lacked adequate preparation. Attorney communication with clients and other parties was insufficient.[271]

Maine. Study participants disagreed on a number of issues. Most of them thought statutory provisions were adequate, but were divided over the emphasis placed on family reunification. A majority believed judges did not adequately oversee whether state agencies were meeting the federal "reasonable efforts" standard. Most thought courts could make better use of new technologies but disagreed over whether judges should specialize in child protective cases. Caseloads were seen as too heavy, hearings were believed to take too long to conduct, and alternatives to litigation were inadequately explored.[272]

Maryland. Researchers found a lack of uniformity among different jurisdictions with regard to case data. Judges and masters lacked training. Many parents were not represented. Reasonable effort was interpreted differently in different jurisdictions. Existing data collection and dissemination systems were inadequate.[273]

Michigan. Michigan's problems were typical of the difficulties faced by a large state with a sizable urban population. Explained a report by the ABA's Center on Children and the Law:

> Regarding obstacles to effective court involvement in permanency planning, the areas in need of attention include: providing additional training to the judiciary, court staff, and attorneys due to the creation of family divisions in the circuit courts; enhancing the training and courts' quality control of attorneys representing children, parents, and the FIA [Family Independence Agency]; ensuring reasonable caseloads for judges, referees, and attorneys, especially those in more urban jurisdictions with a high volume of cases; and increasing the court time allotted to abuse and neglect cases to enable the judiciary and parties to fully explore issues relevant to children's initial removal from their families and permanency planning.[274]

Minnesota. The Foster Care and Adoption Task Force noted that it was difficult for private parties to file petitions on abused or neglected children. The appeals process after maltreatment determinations was inadequate. "Best interests" of the child were not ade-

quately defined. There was confusion over the role of admissions by parents and continuances were too frequently granted. Agencies and courts began the "permanency time clock" at different times. Confusion existed over appropriate custody transfer to relatives. "Reasonable efforts" were ill defined. Adoptions were delayed by a number of factors. Laws and rules concerning GAL and lawyer appointments and the role of county attorneys were unclear. Foster parents had little input in the process. Parties found it difficult to gain access to needed information. Judicial calendaring varied. Data collection lagged. Current law barred mandating ADR in foster care cases. Counties need not provide services to adolescents.[275]

Missouri. Areas targeted for improvement were: time frames for conducting hearings, content of hearings, timely appointment of GALs and attorneys for indigent parents, case flow management, and personnel training.[276]

Montana. The court improvement project pointed to inefficient continuances, inadequate information management, excessive caseloads for GALs, insufficient CASA programs, inconsistent representation of parents and the state, excessive temporary orders, high caseloads and travel times for judges, inadequate judicial oversight, and conflicting agency reviews.[277] Analysts also expressed concern over adoption law, particularly "conflicting or inconsistent standards" regarding TPR and the difficulty in locating putative fathers.[278]

Nevada. Common concerns expressed in Nevada's assessment were the dual function of social service officials in assisting and prosecuting families; failure to observe procedures and deadlines; inadequate time devoted to abuse and neglect issues in judicial hearings; not addressing whether the state had made "reasonable efforts" to preserve the family; failure to locate other relatives; judges not issuing findings of fact in hearings; insufficient visits by social workers to children and their families; inadequate representation of children; and too few trained attorneys to represent children and parents in hearings.[279]

New Hampshire. Researchers for the National Center for State Courts identified problems that have proved common to juvenile/family courts across the nation. Examples included splitting child protective cases among different judges and courts, divided trials, long waiting times, insufficient training, inability of courts to monitor their overall caseloads, late filing of case plans and reports, a high rate of open cases, lack of court control in TPR cases, inadequate experience of and training for some GALs, and tensions between the courts and the Department of Children, Youth, and Families.[280]

New Jersey. The Court Improvement Oversight Committee was sharply critical of this state's foster care system:

> The current court process is far too prolonged. Children linger too long in out-of-home placement while cases move–often for years–from review to review. It is true that the child welfare cases demand some of the most difficult decisions required of a judge. There are some inherent problems in case practice, however, which impede the court's ability to make appropriate and timely decisions. The lack of sufficient information, the quality of the review, the lack of compliance and the focus of the court on the process, rather than the outcome, create significant barriers to effective decision-making.[281]

The Committee offered a devastating detailed bill of particulars. Judges lacked sufficient information to make decisions, as personal participation and written presentations lagged. Court reviews were often pro forma and intermittent. Compliance with court orders could be intermittent to nonexistent. Judges tended to order that parents complete process-oriented tasks rather than achieve end results, such as being drug-free. Judges lacked sufficient training and staff. Court implementation of rules and statutes was inconsistent. Coordination within and without the system was inadequate. Case monitoring and tracking was insufficient. Legal representation was poor. The effectiveness of Child Placement Review of foster care decisions was limited. Inadequate agency resources hampered court efficiency. The CASA program had only a limited reach statewide.[282]

New Mexico. The Supreme Court Foster Care Task Force pointed to a number of deficiencies in handling abuse/neglect cases. There were "significant delays in permanently placing children."[283] Contract attorneys outperformed appointed counsel. Some reviews did not efficiently promote the goal of permanent placement. Training was inconsistent. Psychological evaluations were over-used. Courts were using differential case management in many cases, but not foster care actions.[284]

New York. This state has a large foster care population and significant foster care problems. Researchers found that caseworkers provided little information, including reports, in writing to courts and missed too many hearings.[285] As a result, "courts are not systematically informed on relevant issues. Without this information, it is difficult for the court to make reasoned decisions about where the child will live while the case is resolved."[286] Parental attendance varied. Not all parents had lawyers; attorneys were largely inactive outside of the courtroom. In a majority of cases judges made "little inquiry" about reasonable efforts. Services were discussed in only a small minority of cases. Caseloads were heavy and hearings were short. Adjournments were frequent.[287] Most seriously, "The unacceptable fact is that children in New York City now languish in foster care for an average of 4.3 years," and could wait years even after the filing of an adoption petition.[288]

North Carolina. A review of North Carolina's juvenile courts by the Research Triangle Institute pointed to a variety of barriers to permanent placements for foster care children, ranging from inadequate social services to poor court procedures. System participants most often cited problems such as shortage of adoptive homes, failure of parents to comply with the case plan, and too few caseworkers. Still bothersome but lagging behind were court issues: court continuances that caused delays, too many court hearings, and unclear court orders.[289] More specifically, the Institute noted delays in completing proceedings, excessive waiting times, duplicative hearings, some problems with training and experience of parents' lawyers, the lack of formal cooperation between court and child welfare agency staff, and an inadequate court information system.[290] Reported the Institute: "The major differences between respondents consisted of the emphasis they placed on barriers selected."[291]

Ohio. The National Center for Juvenile Justice interviewed and surveyed the full range of public and private professionals involved in family law in 10 counties. The Center's conclusion was that Ohio family law was "uncoordinated" and "confusing"; courts handling family matters had inadequate resources; information tracking and sharing was "not sufficient"; and "strong judicial leadership" was necessary to develop "a family-focused court system."[292] The problem of resources ranged from public facilities, personnel, and training to private parties who were unable to afford attorneys.[293]

Oklahoma. Problems in this state were found to be similar to those elsewhere: extensive delays, particularly in TPR proceedings; sometimes rushed hearings and insufficient judicial oversight, with judges relying on information of inconsistent quality and preparing journal entries with inadequate findings of fact and conclusions of law; agency and provider case plans and reports of insufficient timeliness and quality; failure to set hearings in a time-certain manner, high rates of continuances, and a lack of a computerized case management system; inadequate staffs and court facilities; "irregular" communication among some participants; lack of sufficient training for judges, other court personnel, and advocates; and insufficient guidelines regarding the role of CASAs and inclusion of volunteer review boards in decision-making.[294]

Oregon. According to staffers of the Juvenile Rights Project, which prepared this state's juvenile court assessment, Oregon "lacks standard timelines for processing abuse and neglect cases."[295] Moreover, children and parents often failed to appear at hearings, in many cases due to inadequate notice and understanding of their rights and duties. The parties and courts often did not address important issues; judicial oversight was frequently pro forma. The degree and quality of representation of children and parents varied.[296] Finally, court caseloads had grown more quickly than resources, "making it impossible for judges to oversee critical issues in dependency in any meaningful way."[297]

Pennsylvania. A survey of participants in the state's juvenile courts found overall dissatisfaction with judicial handling of adoption, dependency, and TPR cases to be 21.8 percent, 23.6 percent, and 34.3 percent respectively. Those levels rose as one moved from government attorneys and judges to caseworkers, government-appointed attorneys/GALS, CASAs, and others, including foster parents. Dissatisfaction also rose dramatically in the largest counties, of Allegheny and Philadelphia, nearing or exceeding 50 percent in different categories.[298]

Problems included case flow management, timing of critical case events, service delivery to families, court oversight of service delivery, and training. Concluded the surveyors, the foremost theme "is the recognition that problems related to the delivery of services to victimized children and their families is most frequently seen as a moderate to serious problem for all respondent populations."[299]

Rhode Island. The National Center for State Courts reported in late 1995: "Cases, particularly contested actions, are slow to resolve. Continuances are common, requiring the parties to return to court over and over again. Waiting times for hearings are long. In some cases, it was felt that hearings do not adequately cover the issues that should be addressed."[300] In particular, the state lacked an adequate case flow management system, use of information technology lagged, mediation was rarely employed prior to the pretrial conference, judges used a modified master calendar system, court administrative efficiency could be improved, hearings were block-scheduled, caseloads were excessive, reasonable efforts were not consistently considered, hearings were usually too short, and the interests of foster parents were not protected.[301]

South Carolina. A detailed survey of judges, lawyers, and others involved in foster care raised a number of issues. Participants believed additional staff was needed, some minor neglect cases could be handled outside of court, monitoring cases for compliance was haphazard, a finding of reasonable efforts was evident in only a minority of hearings, TPRs were delayed, pretrial conferences were infrequently held, judges received many of their reports and other information the day of the hearings, representatives spent limited time with their clients, many parents went unrepresented, hearings averaged 15 minutes, average waiting times ranged up to two hours and waiting facilities were inadequate, manifold continuances contributed to frequent delays, additional training would be beneficial for various participants, and communication and cooperation among courts, agencies, and others was low.[302]

Tennessee. Researchers for the Tennessee Permanency Planning Commission pointed to lengthy delays in releasing children from custody, terminating parental rights, and achieving adoptions. Caseworkers believed that they needed additional education and training; judicial officers and lawyers currently had even fewer such learning opportuni-

ties. Most judges failed to assess reasonable efforts regularly, and often did not inquire as to service provision to families. Judges rarely made written findings. The depth of hearings varied; many were very brief. Reports by various parties were of varying usefulness. Case plans were often late. Counsel of varying quality sporadically represented children and parents. Unnecessary continuances were frequent. Some counties did not meet statutory deadlines for hearings and reviews. Interested parties often failed to receive hearing notices. Waiting times were excessive.[303]

Biological parents, foster parents, and children articulated more personal concerns, particularly a sense of powerlessness and lack of control.[304] Broader problems included the difficulty faced by judges schooled in the adversary system in playing an active role in a case management system; they usually yielded to the social welfare agency. The lack of a unified court system affected data availability, caseloads, and ease of moving through the system. Political and legal authorities also appeared to place less emphasis on the work of the juvenile courts.[305] Yet for all of the importance of court practices, the report concluded that "The most significant indicator of both commitment rates and lengths of stay is the number[s] of services available to families in each county. In counties where services are available, commitment rates are lower, and children move out of custody more quickly than do children in counties without many services."[306]

Texas. The task force reported on excessive caseloads, inadequate resources for GALs, uncooperative parents, inexperienced and insufficiently prepared social workers, inadequate notice to parties, poor representation of children and parents, insufficient attention by judges to issues, inadequate preparation by state attorneys, scheduling problems, failure to expeditiously terminate parental rights or comply with statutory deadlines, inadequate use of mediation and other mechanisms to settle disputes, and lack of accountability in achieving permanent placement.[307]

Utah. In this state, explained researchers, although emergency shelter hearings are usually held within the required three days, "Compliance with later state requirements of the [Utah Child Welfare Reform Act of 1994] varies."[308] Hearings and adjudications often took longer than the statutory deadlines; calendar conflicts, scheduling problems for attorneys and witnesses, and heavy caseloads were causes.[309]

Vermont. Problems identified included the lack of interest of some judges in child welfare cases, the desire of a majority of jurists for additional education and training, the too-quick rotation of judges through family courts, the use by many courts of mixed individual/master calendar assignments, poor scheduling practices, long wait times, the lack of a case manager for children in need of care litigation, inadequate case tracking, late report filings, frequent continuances, failure of courts to make serious reasonable efforts inquiries, adjudication, hearing, permanency planning, and appellate delays, and

inconsistent representation of and quality of representation of parties.[310] The latter point—the difficulty in "maintaining consistent legal representation" for parents—was subsequently reiterated in a later report.[311]

Virginia. The Advisory Committee on foster care and adoption shared the view of most other analysts and organizations in assessing state efforts: "too much time elapses between the time a child is before the court on allegations of child maltreatment and is placed in foster care and the time that child goes home or to a safe, permanent alternative placement."[312] The Court pointed to no single factor but, instead, "the participants in the system and the nature of the process all contribute to extending the time that children spent out of safe, permanent placements."[313]

Washington. The Office of the Administrator for the Courts conducted a narrow inquiry dealing only with CASAs and GALs. It found a "pressing need for GALS/CASAs in juvenile dependency" cases and cited limited volunteer resources.[314] Continuing private funding of CASAs was not considered to be realistic. There was no code of conduct for GALs. Appointment orders didn't define the case-specific responsibilities of CASAs and GALs; the lack of direction caused some confusion. Favoritism and lack of accountability afflicted the use of GALs. Appointment and compensation of GALs raised difficulties.[315]

West Virginia. Analysts discovered a number of serious failings in the state handling of abuse and neglect cases. Participants in the system misperceived their roles and incorrectly believed that extraordinary efforts were required to keep families together, delaying permanent placement of children. Deadline compliance was less than 50 percent and fell as low as 3.8 percent for one judge. Case files were missing orders, continuances unduly delayed cases, and case flow management, court reviews, case plans, and advocacy were all inadequate.[316]

Wisconsin. The Denver-based Center for Public Policy Studies assessed state procedures and practices in four counties involved in Wisconsin's Children in Need of Protection or Services (CHIPS). The Center found "major strengths," including conformance with state and federal law, local flexibility, and dedicated personnel.[317] Problems, which varied by jurisdiction, included:

- "CHIPS cases often take too long to process."
- "The hearing process for many matters is inefficient and ineffective."
- "There is lack of needed coordination among the agencies collectively responsible for effective CHIPS case processing."
- "Judicial oversight of individual CHIPS cases and CHIPS case processing is often ineffective."

- "The courts generally lack the automated case management infrastructure needed to monitor CHIPS cases and CHIPS caseloads."
- "There is considerable need for joint training of the judges, attorneys, and human service workers responsible for CHIPS case processing."
- "Minority community needs and values should be better reflected in the CHIPS system."[318]

Appendix B: A National Survey of Reforms

Alabama. This state's review advocated improved case flow management, particularly through judicial leadership, use of time-frame guidelines, restrictions on continuances, and improved case monitoring and record keeping. It also contended that steps should be taken to improve docketing and hearing procedures; notice needed to be given to all parties and copies kept in case files. The foster care process should be streamlined to encourage judicial involvement in TPR and adoption proceedings. Also necessary was to increase training of, compensation for, and access to attorneys, CASAs, and GALs. Judges should be educated on the required determinants for "reasonable efforts" and "best interests." Training should be conducted for key participants.[319]

In practice, the state has moved forward in some areas, offering training to assist court personnel and improve court hearings. The state also sought to improve notice given to participants and scheduling for hearings. The state has focused on training.[320]

Alaska. The Alaska Judicial Council set out a series of recommendations for improving state juvenile proceedings. It advocated that courts accord higher priority to abuse/neglect cases and focus on the child; judges take a more active role in foster care cases, handle cases from beginning to end, and seriously review reasonable efforts; delays be ameliorated through adoption of time standards, changes in calendaring practices, and adding judges; courts implement the planned statewide computerized case management system and standardize forms and procedures; system participants cooperate more effectively; training be offered to judges and other court personnel; additional resources be devoted to foster care cases; court facilities be improved; GALs be appointed in all cases; the role of absent parents be limited; and courts implement a pilot mediation project.[321] Additional, more specific suggestions (such as use of time lines) were offered to improve hearings, and speed adjudications, dispositions, and TPR proceedings.[322] The Council also advocated improvements in the management of the welfare bureaucracy, training of caseworkers, use of GALs, and legislative provision of necessary resources.[323]

Separately, analysts Susanne Di Pietro and Teresa Carns proposed that the courts devote a higher priority and greater resources to foster care cases. Moreover, all issues should be analyzed "in the context of the interests of the child."[324] They also urged judges to take a more active role, ensure that timely notice is given, seriously inquire as to reasonable efforts, and take steps to expedite the process. A pilot project should assess whether pretrial conferences can save trial time. Training should be provided to judges and court personnel.[325]

The state has been offering various training programs and developing a judicial bench guide regarding foster-care cases. Other steps include implementing two pilot mediation projects, improving case management, adding children's masters, and imposing penalties for judges failing to meet statutory deadlines.[326]

Arizona. Researchers for the National Center for Juvenile Justice offered a number of recommendations for reform. Regarding court practices, the Center suggested earlier and lengthier hearings, earlier availability of counsel, stricter deadlines, detailed discussion of reasonable efforts determination, agency services, parental obligations, and so forth, and hearing checklists of important issues. TPR should be expedited through early screening, assignment to the same judge who handled earlier dependency issues, and speedier home study assessments. Cases should be assigned to a single judge, appointments for juvenile cases should be lengthened, calendaring should be for a time-certain, and continuances should be controlled. The court should implement automated case tracking, set training requirements for judges and lawyers, and increase cooperation among courts, the Dependent Children's Services Division, and Foster Care Review Boards.[327] The study also advocated increased services.[328]

The legislature has streamlined the hearing process. Courts have used additional funds to increase representation for indigent parents. The state also increased staffing, improved data base management, and offered numerous training programs.[329]

Arkansas. The state Supreme Court's advisory panel offered 65 recommendations for improving foster care procedures. Leading off was the mainstay of more training. The Committee advocated the issuance of reasonable efforts findings at every stage of the process, provision of more services, and more systematic treatment of case plans. The analysts suggested establishing one statewide system for the representation of children and parents in abuse/neglect cases, creating a CASA program, and issuing standards for lawyers. Other proposals included adding the name of putative parents to dependency-neglect petitions, increasing information-gathering and reviewing case plans at hearings, expediting deadlines for reviews and TPR and adoption proceedings, restricting use of "voluntary placements," increasing use of pre-trial conferences, more efficiently setting hearings and limiting continuances, providing more space for waiting in court buildings, and adjusting judges' caseloads.[330] The Committee advocated continuing attention to these problems by all interested parties in order to ensure that "positive changes become institutionalized."[331]

In 1997, the legislature reformed dependency-neglect cases, addressing deadlines, notification, representation, case plan requirements, and court reports.[332] These changes were the centerpiece of the state's court reform efforts. Since then, according to the ABA, the state has focused "on obtaining funding for counsel, developing standards for counsel, developing training initiatives, and supporting expedited appeals."[333] The state is providing regular training for juvenile judges, has created a pilot mediation project, and is considering new legislation to speed the process of terminating parental rights.[334]

California. Researchers for the National Center for State Courts, which produced the state's court improvement project, offered 27 recommendations covering the gamut of foster care issues. Courts should utilize calendaring processes that reduce waiting time,

monitor report quality and timeliness, limit continuances, and rely on the *Resource Guidelines* for conducting hearings. Deadlines should be shortened, ADR mechanisms should be used, financial disincentives to permanency planning and reunification should be removed, incarcerated parents should be able to participate in hearings, children should be allowed to attend hearings, training should be provided to judicial officers, a single judge should hear a case from start to finish, sufficient resources should be made available to juvenile courts, judicial rotations should be lengthened, statewide automated information systems should be established for foster care cases, and representation should be expanded and improved. Finally, juvenile courts should increase their communication with social welfare agencies, the legislature, and the public.[335]

The ABA's 1998 report concentrated on the assessment of problems to be addressed by California, a state greatly affected by the issue of foster care.[336] The state has begun moving forward with reforms. Among the initiatives: a variety of pilot model court projects, involving conferencing, mediation, training, and the like, an expanded CASA program, efforts to expedite appeals, upgraded computer capabilities, training for court personnel, and studies of child dependency decision-making.[337]

Colorado. In 1994 and 1995, respectively, the legislature approved measures to expedite permanency proceedings for children under six and to require the Department of Human Services to establish three pilot mediation projects. The following year, the state's Chief Justice promulgated practice requirements for GALs and judicial officers acting under the Children's Code.[338]

In her 1996 report, Laurie Shera, on beha!f of the court improvement project, offered dozens of specific recommendations. To more speedily achieve permanent placements, she proposed: firmer control of continuances, more thorough and timely court filings, hearings, and decisions, concurrent planning, better case flow and docket management, training for participants, earlier appointment of GALs and attorneys, improved availability of services, improved coordination among all participants, and statutory changes to restrict jury trials and otherwise expedite cases and reviews. She advocated a number of steps, such as matching skill levels to appointments and better communication between judges and counsel, to improve representation by lawyers, GALs, and CASAs, and to enhance cooperation between judges, caseworkers, and attorneys. Finally, she suggested statutory and procedural reforms to expedite appeals, increased training of foster-care participants, and better, more family-friendly court facilities.[339]

In 1997, the state Supreme Court and legislature adopted rules and statutory changes to detail new representation and hearing requirements and expedite permanency planning for young children.[340] Since then, the state has been assessing earlier changes in court procedures, reliance on GALs, and attempts to speed up the hearing process. There have also been attempts to enhance judicial training, increase court staffing, and upgrade information management.[341]

Connecticut. Researchers recommended that the Superior Court equalize funding of its juvenile and other divisions, clarify judges' roles in handling foster care cases, and lengthen juvenile assignments. The court was also urged to improve its case management by hearing emergency petitions more quickly (while the state should more clearly specify the grounds for emergency removal of a child), employing individual case management, dropping the requirement for unnecessary motions, expediting the permanency planning hearing, discarding the requirement that parties exhaust administrative remedies before going to court, and hearing cases in a continuous manner. Mediation, case performance standards, cooperation with other participants, and an automated case management system were also suggested to improve the handling of dependency cases. Finally, the court improvement report proposed that additional resources be devoted to attorneys for both families and the state, specific roles of children's lawyers and GALs be established, services be expanded, and the role of the Probate Court in foster care matters be studied.[342]

The state is experimenting with a pilot case management protocol to improve hearing quality. The state has enhanced a "standby counsel" program to expand representation of parents statewide, improved notice to parties and courtroom facilities available to families, and added training opportunities.[343]

Delaware. The court improvement report advanced a number of recommendations. They include: assigning all child welfare cases to judges and each case to only one judge, establishing a series of hearings and reviews, strengthening the judge's decision-making role, ensuring that court orders reflect relevant information and decisions about the child, eliminating unnecessary delays, ensuring equal access to court information, standardizing forms and procedures statewide, establishing a formal procedure for court referrals to the Department of Family Services, making better use of court and volunteer resources, expanding representation of children and parents, offering training programs and setting standards for participants, developing a management information system to track cases, promoting better reporting and information-sharing, proposing statutory and rules amendments, and creating an evaluation system.[344]

A variety of work groups is reviewing areas of concern. Proposals have been advanced to expand representation of children through CASAs and parents through legal aid lawyers, to improve training of judges and other court personnel, and to strengthen cooperation with the child welfare agency. Steps have also been taken to reduce waiting time through better scheduling and improved data management.[345]

District of Columbia. The court improvement project recommended exploring several steps to improve the court process: using judicial officers to provide more uniform and comprehensive treatment; having lawyers specialize in representing children or parents; adjusting attorney compensation; making treatment plans available at the initial hearing;

providing more investigative time before the initial hearing; and developing a supervised visitation center. In order to improve hearing quality, the project suggested setting time standards for holding hearings and limiting their length, restricting continuances, setting aside more time for hearings, developing issue checklists, adjusting scheduling, monitoring report quality and timeliness, and utilizing ADR strategies. Several proposals were also advanced to enhance the quality of attorneys, training, court facilities, and cooperation between the courts and the Department of Human Services.[346]

The District has undertaken a modest reform program. It has, for instance, undertaken a pilot program involving mediation in an attempt to cut delays, opened a supervised visitation center for families, and is in the process of developing practice standards for attorneys. The District is also offering training and attempting to improve data management.[347] Special initiatives have been launched to speed abandoned babies into adoptive homes, assist special needs children, identify adoptive families, create a directory of resources and services available to families, review the possibility of implementing the family court model, and promulgate new adoption rules.[348]

Florida. Topping the list of suggestions in this state was better judicial training combined with mentoring, with the goal of promoting "judicial enforcement of time-frames for the completion of tasks."[349] Other proposals included improved judicial administration, including a three-year term in dependency cases; improved program implementation by the Department of Children and Families; statutory and rules changes to improve parental representation and court review; and improved court operations, including reliance on mediation and citizen review programs.[350]

Through the court improvement project, the state has developed a checklist to ensure judicial attention to all relevant issues at each stage of the process, acquired additional revenue to ensure representation of indigent parents, and conducted training of judges and child protection staff. Funding has been requested to create case coordinators and potential improvements through technology are being studied.[351]

Georgia. The state's Advisory Committee offered a number of detailed proposals for improving record-keeping and court management practices, improving education and training of all participants, developing practice standards for judges, lawyers, and court staff, ensuring representation of all parties at every decision-making stage of the process, and providing funding for a juvenile court judge in every county or circuit. The Committee suggested that an independent Implementation Committee be charged with helping to put the recommendations into practice.[352]

Subsequently, guidelines have been developed and training offered for juvenile court judges to improve the hearing process; training is also being provided to CASAs and citizen review board members. Computers are being acquired for juvenile courts, an internship program has been developed through Emory University to expand representation for

parents, and reference publications and videotapes have been produced. Proposals have been advanced to expedite appeals and develop a program to find putative fathers.[353]

Hawaii. The National Center for State Courts advocated that Hawaii lengthen judicial assignments before rotation and allow a single judge to handle cases from start to finish, add judges to lower caseloads, appoint specialists as Family Court judicial officers, provide ongoing training for jurists, improve case flow management, educate participants as to their respective role in foster-care cases, impress upon all participants the importance of meeting statutory deadlines in fulfilling permanency plans, focus on cases which are not moving as expected, expedite appeals, provide "quality representation" for all parties, use ADR techniques, and simplify agency reporting requirements.[354]

The state implemented a "one judge/one family" policy, which improved the hearing process; data management and training remained issues of significant concern.[355] GALs are now required to attend training classes, new software is being added to improve data management, a statewide judicial bench book is being developed, and the "Adoption Connection" project is being pursued to better recruit adoptive parents, match them with eligible children, and offer post-adoption services.[356]

Illinois. In an effort to overcome "impediments to achieving timely permanence for children," the Citizens Committee on the Juvenile Court Support Fund offered a number of suggestions. One is that "All participants in a child protection proceeding must feel and act on a sense of urgency about the case."[357] In particular, judges should improve practices and standards to accelerate the process.

The Committee also emphasized the importance of judges receiving adequate information to make good decisions; having all participants, particularly parents, active in the process; ensuring good communication among various parties; and involving community participation. The Committee concluded that "effective judicial leadership can impact a court system and the quality of justice it provides," and contended that "a solid 'best practices' infrastructure must be erected to ensure that reform efforts survive changes in leadership."[358] It proposed building on current initiatives, which include changes in permanency planning legislation, and new efforts regarding education, training, and information management.

The state has focused reform efforts on accelerating the process and reducing delays, rather than on "qualitative issues."[359] Cook County has undertaken extended temporary custody hearings and "court family conferences" in an attempt to improve the hearing process. Pilot projects are being undertaken and grants have been awarded to expand representation of children and parents, reduce case delays, increase access to computers and copying machines, educate parents, encourage adoption, and promote intercounty cooperation.[360] Explain the ABA analysts, "Overall, the Illinois court improvement project has instituted a local grant approach to allow individual counties to provide solutions to unique problems."[361]

Indiana. The task force recommended that court reviews be expedited, use of CASAs be expanded, early intervention programs be initiated, "WrapAround" programs involving a variety of agencies be tailored to meet the needs of particular families, special therapeutic and other programs be developed, and relations be fostered with the media.[362] More generally, the study urged better training of all participants in the juvenile court system, consolidating all abuse and neglect cases into family courts, and improving coordination of service delivery to children and families.[363]

Action has been undertaken primarily through the grant-making process. Funds have been used to provide legal representation for CASA volunteers, to hire a process server to provide better notification, and to improve data management.[364] The state earlier initiated five demonstration projects involving computers.[365]

Iowa. The state's Court Improvement Project offered a number of proposals: enhance judicial oversight of permanency, TPR, and post-TPR proceedings, hike funding for overburdened courts, increase attorney compensation and training, improve communication with parents, expand the CASA program, improve communication among participants and especially with family members, enhance notice procedures, and offer training for juvenile judges.[366]

As part of the reform process, the state has created task forces to survey reform issues, proposals for legislative and rule changes, and a pilot training program for lawyers.[367] Subsequently, the Quality of Representation Task Force has suggested statutory changes and revisions in GAL guidelines, and additional lawyer training to improve representation; it has also developed an attorney practice manual. An additional CASA program has been created and a pilot project is being created in one district to test various improvements in the process. The court improvement project is also pursuing additional reform initiatives, which have garnered various levels of support within the judicial and legislative branches.[368]

Kansas. Reform initiatives include additional staff, better training for judges and GALs, and improved data management. A judicial checklist, to ensure compliance with recent legislative changes, is being developed.[369]

Kentucky. Analysts recommended upgrading court facilities, expanding the statewide case tracking system, providing information to families on foster care procedures, examining the relationship between the dependency and juvenile courts, reviewing implementation of recommended courtroom procedures, such as "one family-one judge calendaring," and increasing representation of caseworkers. The review also urged better cooperation between the court and the Cabinet for Human Resources, development of protocols governing written notification, establishment of appointment requirements and training for GALs, and provision of training for all participants in the system.[370]

The legislature approved statutory changes setting a deadline for holding a permanency planning hearing and reducing requirements for TPR. Through the court improvement project, the state has developed case tracking software; created videos to promote foster care and adoptive parents; offered cross-training among different professionals; developed pilot projects to improve legal representation of children; begun developing a GAL training program; expanded use of CASAs; and supported nine model family courts. The chief justice of the state Supreme Court has established a commission to review GAL issues, including standards, training, and pay.[371]

Louisiana. The state's Advisory Committee recommended creation of an automated, integrated statewide juvenile data system. Other proposals included creating uniform data formats and hearing procedures, restricting use of continuances, reducing delays for hearings to begin, encouraging creation of CASA programs, offering training for attorneys and judges, expanding legal representation of parties, and establishing a court liaison officer to improve communication among the judge, Office of Community Services, and parties.[372] The panel also suggested shifting some reviews over to OCS, reconsidering use of appearance hearings, and coordinating with OCS in locating witnesses and assuring prompt notification of parties.[373]

Training is being offered for judges and other court participants; materials to improve the hearing process are being provided to judges. To increase representation of parents, pro bono attorneys are being recruited and trained. The Louisiana Court Improvement Project has developed a case tracking system to speed decision-making and is working on a broader integrated juvenile justice information system. The project is also encouraging use of mediation and informal communication to improve the treatment of families. The state Supreme Court has approved a rule to expedite all child protection cases and established Judge Advocates to monitor and publicize important issues. A campaign is being conducted to inform the public of the problems of foster care and the need for reform.[374]

Maine. This state recommended that judges actively oversee child protection cases for their full life. These cases should be assigned to judges who prefer such issues. Courts should develop uniform rules and promote alternative dispute resolution. Courts should clearly set out their expectations of each party in each case, and regularly review the status of children awaiting adoption. Improvements should be made in case flow management and representation of all parties. Courts should improve their use of technology. All parties in the process should have the opportunity of cross-disciplinary training.[375]

In practice, the changes have been more modest. The court improvement project has drafted materials for defense lawyers and organized conferences for judges and court personnel.[376] An automated information system is being designed for all state courts, clerks' manuals are being drafted, a training program is being planned for attorneys, judicial checklists and guidelines are being prepared, and conferences continue to be

scheduled.[377] The state's "major strategy," explains the ABA, "is the development and use of the case management plan," which remains in process.[378]

Maryland. The Foster Care Court Improvement Project made a number of proposals. They included: standardizing and improving information collection, providing training for judges and masters, establishing uniform judicial assignments, clearly defining judges' roles in CINA (Children in Need of Assistance) cases, ensuring adequate staffing and facilities, expanding and improving representation, offering training for lawyers, revising the CINA statute to account for the special circumstances of these cases, managing calendars more efficiently, seriously assessing reasonable efforts, and segmenting and expediting CINA and TPR actions. Perhaps most novel is the recommendation that the state establish a pilot Differentiated Case Management system to handle cases based on the child's specific age and needs.[379]

In five counties, the Maryland Court of Appeals has established family court divisions. Training programs are being offered to improve hearing quality; new standards have been drafted for children's attorneys; and an automated system has been developed to track family cases.[380] The original emphasis of the state's reform program was judicial training.[381] However, for the future, "the strategy of the Maryland court improvement project is to finish the attorney standards, revise the CINA statute, implement the MAJIC [Maryland Automated Judicial Information for Children] system, and continue with training initiatives for judges and masters."[382]

Massachusetts. The state analysis began with an emphasis on timeliness, and advocated reducing the case backlog through improved cooperation among different actors within the system.[383] Massachusetts has increased the number of appellate-level certified child welfare attorneys while limiting the number of cases per lawyer and reducing the number of extension requests. Automation of case management and reliance on recall judges has helped cut the backlog of cases. Creation of a screening judge has streamlined the appellate process. Training is being provided to court personnel. Four alternative dispute resolution pilot programs have been created.[384]

Michigan. Among the most detailed set of recommendations was the one developed for this state. Analysts proposed that the courts use direct calendaring and one-judge-one case in all abuse/neglect cases, offer initial and continuing training of judges and referees, develop written hearing policies and implement case tracking systems, monitor deadline compliance, and expedite appeals. Additional points included: procedures reducing delays should be maintained as courts are reorganized, pretrial conferences should be used to clarify issues, adjournments should be granted for only extraordinary reasons, data processing and file management should be improved, knowledgeable counsel should be appointed before the preliminary hearing for families, specialized attor-

neys should represent the state, appropriate training, compensation, and oversight should be provided for lawyers, and CASA programs should be expanded. Caseloads for judges and lawyers should be controlled, caseworkers should submit parental progress reports prior to hearings and be present at all proceedings, "age-appropriate children" should attend hearings, courts should assess whether "reasonable efforts" have been made, funding disincentives to a negative finding should be eliminated, judges should detail each party's responsibilities, adoption should be considered early, and adequate services should be offered.

The state should consider expanding Foster Care Review Boards and how to use their recommendations more effectively. Pilot ADR projects should be established, ongoing mediation efforts should be evaluated and expanded, and family group conferences should be extended statewide. Permanency planning options should be increased through expanding guardianship, "open" adoption (in which the child maintains contact with his or her biological family), and kinship care. Court facilities should be improved.[385] These steps, argue their advocates, would be not only "cost-effective," but also reduce the time children spend in foster care and speed their entry into a loving family.[386]

According to the Michigan Court Improvement Program, state probate courts are largely in compliance with the *Resource Guidelines*, staffed with judges and referees who are well versed in foster care law, and "have implemented systems of case calendaring and assignment, case flow management techniques, and early attorney appointments that are enhancing the courts' ability to make timely permanency planning decisions in children's cases."[387] Indeed, with justification, project analysts argue that "Michigan probate judges and other court participants have been leaders in the area of juvenile court reform and have implemented court practice, policy and procedure that are models for the nation."[388]

The state permanency planning mediation project has sponsored training for judges, produced educational materials for attorneys, developed a dozen ADR centers, and funded the drafting of a judicial bench book. The project plans on developing protocols to identify absent parents, offering a multidisciplinary training program for lawyers and social workers, and implementing pilot data collection projects.[389] According to ABA analysts, the "project is focusing on building collaborative relationships and developing programs that are responsive to the assessment recommendations," though because the recommendations "are so global, however, one barrier is the difficulty in implementing the recommendations in specific ways."[390]

Minnesota. The state's Foster Care and Adoption Task Force made a number of recommendations, beginning with changes in the standards and procedures in the filing of abuse/neglect petitions, adjudicating maltreatment, deciding what constitutes reasonable efforts, and employing TPR. Deadlines should be clarified and proceedings accelerated. Adoption should be encouraged through more thorough searches for adoptive parents,

speedier legal procedures, expedited appeals, and creation of a putative father registry. Representation should be improved and expanded. Foster parents should have a greater opportunity to participate. Parties should have greater access to necessary information. One judge should be responsible for a case from start to finish. Data collection should be improved. The state Supreme Court should establish pilot ADR projects. Services should be expanded.[391]

The state has approved legislation addressing such issues as procedural deadlines, notification of parents of their legal rights, children's and parents' rights to representation in court, the right of foster parents to attend hearings, and policies concerning adoption and privacy.[392] As part of its reform program, Minnesota has since drafted a new rule regarding attorney representation of children, developed a new GAL training curriculum, and updated its court information system. It is rewriting its juvenile protection rules, running two model courts (a third concluded after a year), and running a family group conferencing pilot project.[393]

Mississippi. The legislature and Supreme Court approved use of a child tracking system and uniform docket numbering system.[394] Mississippi subsequently provided training for public and private participants in the system, mandated training for GALs, established a children's legal clinic at Mississippi College School of Law, automated hearing notices, produced a children's law reference manual for distribution to judges and social workers, and provided computers to children's courts.[395] The state is considering creation of another children's legal clinic, and is planning to transform its manual case tracking system into an automated case management system, "the long-term strategy of the court improvement project."[396]

Missouri. The assessment project recommended several changes: set a specific time frame within which hearings must be conducted, require that hearings cover certain issues, and assure timely appointment of GALs and attorneys (with adequate resources for payment).[397] Further, it recommended that "initial and ongoing training that is specific to handling child abuse and neglect cases be provided for all judges/commissioners, juvenile officers, guardians ad litem, CASAs, attorneys for the juvenile office, attorneys appointed to represent the parents, and DFS personnel who are assigned these cases."[398]

In practice, the project offered training for juvenile court personnel, promoted court automation, and ran three demonstration courts. So far, the most important aspect of Missouri's reform program has been to implement guidelines developed by the National Council of Juvenile and Family Court Judges. The circuits with the demonstration courts improved case scheduling, expanded representation by attorneys and GALs, mandated special training for GALs, and added computers. The child welfare agency has also been cooperating with juvenile courts to speed decision-making.[399]

Montana. The state's Court Advisory Committee developed a number of recommendations. They included: limiting continuances, improving information management, enhancing representation of all parties, encouraging legal education in child advocacy, setting time lines for temporary orders, employing interactive video systems for rural courts, expanding use of magistrates and special masters, educating judges on their oversight duties, creating a single administrative review system, and amending the adoption statutes.[400] Reviewers argued that "even seemingly small improvements will positively impact the court process."[401]

Montana has initiated mediation pilot projects, encouraged local working groups to support those programs, pushed collaboration among different participants, conducted training programs, drafted a judicial bench book, and promoted conference and seminar attendance. It is developing a statewide CASA program and evaluating use of a teleconferencing system to reduce travel by judges.[402] The state also indicates that it is improving communication among system participants and "encouraging the various court participants to believe that they can make changes in the legislative process and the court system."[403]

Nebraska. The state has extended the jurisdiction of juvenile court judges, added CASA programs, provided training for judges, CASA/GAL lawyers, and social workers, developed a workbook, newsletter, and other information on issues involving children, created investigative teams, and conducted attorney surveys regarding termination of parental rights hearings. It is also developing a family group conferencing model to better involve families in decisions regarding their children.[404]

Nevada. This state combined comments from various consultants and advisory committees, generating 93 recommendations. Some commanded unanimous support; others were somewhat controversial. Proposals were advanced for better court record-keeping and case management, allocating more time for hearings, screening out cases which do not require a full hearing, improving the assessment of "reasonable efforts," requiring training by those who represent parents and ensuring appointment of GALs for every child, searching more effectively for missing parents and increasing family visitations, issuing judicial findings of fact, expanding in-home services for families, ensuring the case plan meets the particular abuse/neglect problem, requiring judicial approval of changes in the case plan, setting deadlines for permanency planning hearings, improving recruitment and training of CASAs, and many more.[405]

The practical results of Nevada's reform efforts have been more modest; it had not begun its implementation efforts in time for the 1998 ABA assessment.[406] The Las Vegas district has undertaken the Guardianship Project, which contracted with private attorneys to expedite the establishment of guardianship, necessary for a permanent placement. Another district court created a Citizen Review Panel to speed fulfillment of children's permanency plans. Counties implemented pilot programs promoting family reunification

and offering advocacy services for foster children. The state is considering developing a statewide training program for judges and other court staff.[407]

New Hampshire. In its report for the state, the National Center for State Courts offered a number of recommendations. First was assigning all phases of juvenile cases to a single judge. Also cited was the need for better case management and scheduling, creation of a statewide family court, additional training, improved data collection regarding cases, limiting continuances, making hearings more effective, ensuring that parents receive services, a shorter period for family reunification efforts, reliance on ADR mechanisms, and expanded and improved representation of children and families.[408]

The state conducted a supplemental assessment after concluding that the original survey was not adequate.[409] As part of its reform effort, New Hampshire is studying how to better use GALs and CASAs. It is also developing time standards for delivery of decisions, as well as materials to guide participants in foster care cases, and has conducted training for judges and other participants. The state's focus is improved training, especially of part-time judges with only limited expertise in foster-care cases.[410]

New Jersey. The state's Oversight Committee set as basic objectives improving cooperation among judges and other system participants, improving the quality and speed of case processing, and ensuring provision of adequate resources. To do so, it recommended simplifying statutory standards and processes, improving the case tracking system, establishing consistent structures, procedures, and forms, creating special fast-track procedures for some cases, adding staff support, providing training for participants, expanding representation for children and parents, establishing practice standards, undertaking regular interagency meetings, and improving communication throughout the system.[411]

Reforms have developed primarily since 1998; the state's earlier efforts were "very preliminary."[412] The state has revamped its family division to better coordinate decisions in abuse and neglect cases, added judges, improved training for them, and created and expanded the Family Automated Case Tracking System. The Judicial Council has set goals to speed adjudication of child protection cases. Government lawyers have been shifted and law guardians have been added to increase representation of parties, including children. The state has expanded notification to foster care parents, developed legal guides for parents, attorneys, and court personnel, expanded use of computers to improve case management, and made new court facilities more family-friendly.[413]

New Mexico. In their report, the Administrative Office of the Courts of New Mexico, Shaening and Associates, and the New Mexico Supreme Court Foster Care Task Force recommended speeding up adjudication deadlines, relying more on contract lawyers, streamlining the review process, improving training for judges, attorneys, and other participants, limiting use of psychological evaluations, and introducing differential case

management for foster care cases.[414] Other initiatives which the analysts believed warranted consideration were creating a consolidated family court, developing community networks to help respond to child abuse and neglect, and reliance on family conferences and alternative means of resolving disputes.[415]

In 1997, the legislature approved the Children's Code, which provided for expedited deadlines in abuse and neglect cases.[416] The New Mexico Supreme Court Foster Care Task Force established a citizen review conference in three jurisdictions to study methods of speeding up the hearing process and created model contracts for lawyers representing children and parents. Other reforms include upgrading and expanding the state's CASA program and experimenting with a pilot mediation project, intended to improve compliance by and satisfaction of participants. Educational materials are being delivered to parents and judges; a bench book, practitioner manual, and other information materials are being developed for judges and other judicial personnel, and training is being offered to court staff.[417]

New York. The Unified Court System has undertaken the Family Justice Program to improve the operation of the state's Family and Supreme Courts, home to more than 700,000 cases a year. It proposed a constitutional amendment to streamline judicial organization.[418] The Family Court is being divided into four sections, one of which, the Child Protective/Permanency Planning Division, will handle all aspects of abuse/neglect, foster care, TPR, and adoption issues.[419]

In the meantime, the Program is pressing forward with reforms. Two court pilot projects are operating. One is testing reduced caseloads, expedited deadlines, and other reforms; the second is setting abandonment cases on a fast track.[420] Additional pilot courts are being established; they would establish various units—for instance, to handle cases where neglect results from parental drug abuse.[421] Special satellite, family treatment, domestic violence, matrimonial, and night courts have begun to offer more convenient or specialized venues; automated kiosks and Community Resource Centers provide information and assistance on family issues.[422]

An adoption fast-track program began operation, and proved to be quite successful, helping to finalize the adoption of 2,100 children by the target date. A related initiative was Foster Care Review Parts, through which the court assessed the cases of children freed for adoption but who remained in foster care.[423] Initiatives are also being pushed to improve case and calendar management.[424]

The state Commission on Justice for Children has drafted a set of reform guidelines for family courts. The Commission is also developing manuals, protocols, and other materials for participants in the foster care process, as well as communities interested in developing additional Children's Centers, which provide child care for litigants. Attempts are being made to improve representation by attorneys and CASAs, enhance training of participants in child protection cases, create an improved data management system, and encourage cooperation among courts and social service agencies.[425]

North Carolina. Researchers at the Triangle Institute offered a number of suggestions, starting with a new, performance-oriented court management system. They also advocated increased training, development of means to increase accountability of attorneys handling juvenile cases, formalizing settlement efforts, such as mediation, and increasing the priority of abuse/neglect cases within the state court system.[426] Participants surveyed as part of the Institute's analysis added a number of recommendations including increased training for judges, lawyers, and other personnel, additional information for participants, better judicial rules and forms, more court time per hearing, changed procedures ensuring that one judge handles a case throughout its life, development of attorney practice guidelines, higher compensation for parents' lawyers, and better docket management.[427]

The state has implemented a caseload management system, which incorporates model timetables to speed resolution of juvenile cases. North Carolina has also developed model rules to better move children into permanent homes. Two court pilot projects are utilizing the model rules, expanding representation to parents, giving extra training to lawyers, employing mediation, implementing other reforms, and reviewing barriers to effective decision-making in children's cases. The state has also provided training to various participants.[428] Concluded the ABA analysts, "North Carolina has focused its efforts on the use of demonstration pilot projects, improvement of laws, development of local rules, the information system, information and technology, and providing technical assistance to other courts."[429]

North Dakota. The state is developing goals and protocols for child protection cases and offering joint training with the Department of Health and Human Services on federal law. North Dakota's primary efforts have been devoted to developing standards on assignment of attorney law guardians and lay GALs, and drafting a protocol and standards for the latter.[430]

Ohio. Analysts believed there to be "a compelling argument for the establishment of a family court."[431] Especially in the absence of development of a family court, the National Center for Juvenile Justice advocated information sharing which, it explained, "is, perhaps, the most powerful tool to be used in better servicing families in courts."[432] This could be achieved both through automation and creation of a "family" clerk to maintain multiple court records per family or a "family" information specialist to gather all information in any legal proceeding regarding a particular family.[433]

Moreover, the National Center advocated that the Supreme Court of Ohio take an active role. It should establish a Family Court Services Office to aid local courts, appoint a standing committee to help coordinate family law dockets, develop pilot sites to test reforms, and work with the legislative and executive branches to convene a Family Code Revision Commission to amend the Ohio Family Law Statute.[434] The state

should also focus attention on juvenile courts handling abuse, neglect, and dependency cases, particularly to expand foster care networks, identify adoptive homes, and extend use of CASAs to all counties.[435]

A number of changes are occurring. The state is transforming existing law into a uniform Family Code and expanding its CASA and GAL programs, and has developed a data collection system. The state Supreme Court has endorsed specialization in family law and the court improvement project will underwrite specialized training for judges, judicial personnel, and attorneys. Staffing is being increased in four court pilot projects that utilize different methods of handling child protection cases. The state is running eight pilot projects involving mediation and offering training to judges and other court personnel to promote, among other things, compliance with deadlines. Training is also being provided to CASA volunteers and social service workers; other training initiatives are underway.[436] Reports the ABA Center on Children and the Law: "Ohio states that, by design, its court improvement efforts are moving slowly given the nature of local rules and state dynamics in Ohio. It is approaching court improvement by first building a consensus, as the court system cannot mandate and enforce a particular approach."[437]

Oklahoma. Researchers for the National Center for Juvenile Justice made a number of recommendations for improving the handling of abuse and neglect cases. For instance, they advocated judicial training and administrative reform to improve the quality and timeliness of hearings, steps to individualize and streamline treatment plans and reports to better meet judges' needs, improved calendaring and case flow management to expedite decision-making, the expansion of services to families, reduction in judicial and agency caseloads, an increase in judicial resources to ameliorate "unreasonable workloads," strengthened cooperation among and training of participants to advance juvenile proceedings, and expansion of CASA programs to improve representation.[438]

The most important reform initiative is computerizing Oklahoma courtrooms and creating an information system for state judges. Jurists are also being trained with an emphasis on case management and decision-making in child protection cases.[439]

Oregon. In 1997, the Juvenile Rights Project offered a number of suggested changes. The analysts advocated increased efforts to locate family members and improved scheduling procedures to help get them into court, development of timelines for every stage in the process and expanded reliance on ADR techniques, expanded and improved representation, efforts to enhance hearing quality and expand reviews, and greater efficiency of the juvenile bench through increased resources, use of best practices, assignment of responsibility for each case to a single judge, and additional training.[440]

In practice, Oregon has imposed tougher deadlines on litigating abuse and neglect cases, set a new legal test for guardianship, and established several model courts, which are testing a variety of reform techniques. Oregon has conducted extensive training for

judges, lawyers, and other participants, encouraged the emergence of "judicial champions" to provide local leadership, computerized case management, drafted desk and forms books, and is attempting to improve attorney representation of parents. The state is also enhancing its notification procedures, expanding use of computers and improving its data management system, and considering setting practice standards for attorneys and combining the dependency review and termination of parental rights process.[441]

Pennsylvania. The National Center for Juvenile Justice offered different sets of recommendations for the state and counties. For the state, it advocated attention to improving the training of attorneys and judges, limiting the disruptive rotation of judges, clarifying the role of prosecutors in dependency cases, and expanding the use of CASAs.[442] For counties, the National Center addressed additional issues, including judicial caseloads, case management, and oversight, availability of competent counsel for children and families, and court coordination of service delivery to families.[443]

Pennsylvania is operating three Model Courts. Allegheny is relying on teams of lawyers to reduce the backload of dependency cases. In Erie County, the pilot program is expanding its advocacy programs on behalf of children and parents, and automating its information system. Philadelphia's Model Court is providing intensive services and judicial oversight at the start of the foster care process. Issues addressed in the latter project include notice, family representation, mediation, expedited hearings, training, increased computer use, and family-friendly facilities. Other courts have adopted some individual policies; officials hope to expand others, such as having one judge handle each case throughout its life, statewide.[444]

Rhode Island. The National Center for State Courts emphasized steps that would not increase costs, but believed additional resources were necessary to add staff (court, public defender, and child welfare agency) and upgrade technology.[445]

The Center's other recommendations were similar to those addressed to other states. Rhode Island should study case flow policies, aiming to resolve cases more quickly. In doing so, it should set standards and performance goals, develop caseload management reports, adopt appropriate scheduling practices and rules to move cases along, and provide training to court personnel. The family court should set deadlines, limit rotation, employ individual calendaring, increase use of ADR, add computer technology, and adopt administrative changes to enhance office efficiency. Hearing rules and scheduling should be amended, representation and quality of representation should be expanded, communication between courts and welfare agencies should be formalized, rights for foster parents should be enforced, and training for judges should be provided.[446]

The legislature has adopted statutory changes to encourage adoption and allow use of mediation in dependency, neglect, and TPR cases. Moreover, the state has created a model court in Providence County. (By maintaining all children's case records, Provi-

dence has a disproportionate impact on state policy.) This court incorporates one judge per family, date specific calendaring for child protection cases, expanded representation for parents, mediation, and case management. The result has been to cut more than in half the average time from filing a petition for TPR to concluding the case. The state has also slowed judicial rotation in children's cases, increased judge and staff training, and upgraded its computer system. An inter-disciplinary work group is studying court procedures and timelines.[447]

South Carolina. The state's Court Improvement Project suggested a number of changes as an outgrowth of the study and discussions with the Court Improvement Advisory Committee. The Project proposed to increase court staffing, including use of hearing officers or court masters to assist judges, establish a case tracking system, improve case monitoring and oversight, including thorough administrative assignments and technology usage, have judges do individual calendaring, set hearings for a time certain, reduce continuances, improve compensation, set standards, facilitate involvement of representatives, ensure better distribution of information, adopt steps to improve hearing quality, including a more thorough discussion of reasonable efforts, expedite appeals, offer training to participants, and improve court facilities.[448]

South Dakota. The state is studying changes in rules to speed decision-making, reducing the deadline for appeals, revising its docketing system, giving priority in writing decisions to child protection cases, adding new CASA programs, drafting attorney practice standards, developing a multidisciplinary training program, preparing a practice manual for private and public participants, creating a computerized case tracking system, and evaluating needed resources and staffing. South Dakota has also enlisted a range of practitioners in the foster care field to consider and implement reforms.[449]

Tennessee. The Tennessee Permanency Planning Commission proposed a number of changes. The state legislature should increase protection for biological parents and expedite appeals; the state Supreme Court should adopt the procedures suggested in the *Resources Guidelines*, set competency standards for GALs and attorneys working in the area, and abolish age exemptions from continuing legal education. A pilot ADR project should be established and various training initiatives for attorneys, judges, and other court staff should be adopted. Finally, cooperation among courts, social welfare agencies, and schools should be encouraged.[450]

The state has concentrated on creating Foster Care Review Boards in every county and "providing judges and other court participants with comprehensive training opportunities."[451] FCRBs use manuals and training programs to improve the conduct of all participants in children's cases, addressing such issues as notice and timeliness. Tennessee has produced separate manuals for judges, lawyers, and others and encouraged addi-

tional attorneys to handle foster care cases through changes in payment policies and special recruiting efforts.[452]

Texas. The task force recommended increased use of information technology in court, improved training of advocates and judges, increased use of associate and visiting judges, statutory limits on the time a child can spend in temporary foster care, improved case flow management and judicial control, and encouragement of settlement without litigation.[453]

In 1997, the state set stricter deadlines for the disposition of foster care cases. Eight jurisdictions have implemented model foster care initiatives, funded by the court improvement project. All incorporate mediation. Other reforms include: special cluster child protection judges in rural, multi-county courts; adding judges; retaining a case coordinator to oversee and a case flow management consultant to aid child protection litigation; and creating a Court Improvement Steering Committee to assess barriers to timely decision-making. The state has also created a state-wide parental locator system, expanded the CASA program, provided training and manuals for attorneys ad litem, non-attorneys ad litem, and judges, and improved data and case management.[454]

Utah. The court improvement project developed a number of recommendations. It urged judges to set aside blocks of time for child protection cases, strictly observe and enforce deadlines, use pre-trial hearings as settlement conferences, and make specific findings on "reasonable efforts." The analysts also recommended that courts assign assistant attorneys general, defense lawyers, and GALs as a team, implement multi-judge calendaring systems, develop more simple yet detailed orders, add information to the court data base, and create a "tickler file" on holding permanency hearings. Moreover, the legislature should turn the 12-month review hearing into a permanency hearing and set background checks for kinship care. Training should be provided to participants, children in kinship care should receive the same benefits as other foster children, the Foster Care Citizen Review Board should be made permanent statewide, and court facilities, funding, and technology should be increased.[455]

At the time of the report's publication, some proposals, such as use of pre-trial hearings as settlement conferences and increased benefits for kinship care, had been rejected, but others, such as use of courtroom teams and stricter adherence to statutory deadlines, have been adopted.[456] The state courts employ an administrator to manage court improvement programs and coordinate with the child welfare bureaucracy. Utah has hired an extra judge and other court personnel to reduce case backlogs. A pilot mediation project encourages settlement, especially before the case goes to court. Training is being provided to judges, assistant attorneys general, GALs, and attorneys representing families. The state is implementing courtroom teams (the same state's attorney, defense lawyer, and GAL), adjusting its calendar system, improving notification processes, updating its data collection, and improving court waiting rooms.[457]

Vermont. The National Center for State Courts suggested that the state revise its law to clearly define the court's oversight responsibilities, mandate a permanency planning hearing within 18 months of a child's entry into foster care, and establish grounds for TPR. Training should be provided to judicial officers, cases assigned to one judge, case flow management should be improved, especially in the handling of longer issues, data entry and reporting protocols should be established, hearings should be scheduled for a time certain, continuances should be limited, hearing procedures should be improved, courts should ensure that families receive needed services, deadlines for reunification efforts should be shortened, settlement conferences and mediation should be utilized to reduce the number of appeals, ADR should be explored, counsel should be appointed for children and parents at the earliest stages of the process, standards should be set for and training provided to the representatives of children, use of GALs should be encouraged, and additional attorneys should be deployed to reduce the backlog of TPR cases.[458]

The state has moved forward with a number of these initiatives. For instance, it has adopted rules to speed TPRs and appeals, implemented a case tracking system to improve deadline compliance and hired retired judges to help eliminate a backlog in TPR cases. Vermont also has undertaken two pilot courts, which place a heavy emphasis on legal and social services to families after a child's removal; the number of contested hearings has fallen as a result. The state has used the Court Improvement Advisory Committee to improve cooperation among court participants, upgraded its computers and data collection, and encouraged judges to take on a leading role in reform efforts. Other steps include improving representation of parents, planning training initiatives, and considering alternative dispute resolution and family conferencing.[459]

Virginia. The Advisory Committee advocated a number of changes. The Virginia District Courts Manual should be amended to include "uniform, specific procedures" in child abuse, neglect, and foster-care cases.[460] Statutory procedures from beginning to end need to be clarified and strengthened. Court calendar management should be improved, information should be shared among agencies, court and social services personnel should receive training on family law issues, improved legal representation should be made available to families and local social service agencies, and improved oversight offered for the placement of at-risk children with relatives.[461]

The Virginia legislature has set firm deadlines throughout the foster care process and increased the role of preliminary protective orders. Strict calendar management and next-day scheduling are thought to have cut delays in permanent placement for foster children and interim waiting time for participants. The state provides training to judges and court personnel as well as private lawyers, GALs, and agency attorneys and has conducted multidisciplinary training conferences. Virginia's court improvement project has also developed a manual for training programs, improved the courts' ability to track cases, and drafted standardized court forms and orders.[462] The state "has continued its

strategy from the previous year by designing and implementing programs that will serve to effect change in every juvenile court."[463]

Washington. This state's court improvement report focused on GALs and CASAs. The analysts recommended that the state increase use of CASAs, mandate continuing education and training for CASAs and GALs, define the role and responsibilities of GALs and CASAs, increase superior court oversight of GALs, and adopt a number of other procedures for use of CASAs and GALs.[464]

The state Supreme Court has adopted a rule providing for expedited review of dependency cases and considered several changes affecting CASA volunteers and GALs.[465] The state has also implemented two pilot court projects: one extended judicial rotations, added a case manager, and opened a larger court facility; the other included guardianship and TPR issues in pretrial conferences. The state has provided training for judges, public and private attorneys, and others involved in foster care cases. It has also encouraged expansion of volunteer GAL projects. Washington's court improvement project drafted a bench book for judges and other court participants.[466]

West Virginia. The state's Court Improvement Oversight Board developed a number of reform proposals. Their goals included improving judicial oversight, clarifying the participants' understandings of their respective roles, providing them with comprehensive training, speeding the movement of more children into "safe, permanent homes," and improving advocacy, hearings, court orders, case records, services, and information sharing. To promote practical implementation, the Board advocated education and training, development of checklists and guides, review of statutes and rules, and implementation of a pilot improvement program.[467]

West Virginia has addressed a number of issues. In 1994, the legislature mandated the use of multidisciplinary treatment teams in abuse and neglect cases. Two years later, it shortened deadlines for parents to meet improvement requirements. The state bar and Department of Health and Human Resources Development conducted research and provided training. Early in the decade, the state supreme court adopted standard forms and established the Advisory Committee on Child Abuse and Neglect.[468] In 1996, the court required quarterly reporting on all active abuse and neglect cases. West Virginia has also implemented new procedural rules for abuse and neglect hearings, developed training initiatives, including desk reference and guidebooks, and created computer-generated court orders.[469]

Moreover, the state has established a major pilot project. One aspect is strict compliance with deadlines; another is improvement in the notification process. The model court includes a multifaceted effort to improve the parties' representation and expanded authority for judicial secretaries. Bench books and computers are being furnished to the judges. More generally, the state is providing training and mentoring for lawyers, offer-

ing multi-disciplinary training for different court participants, and improving information sharing between the courts and social welfare agencies.[470]

Wisconsin. Analysts made five major recommendations. One was to hold a statewide conference "to consider CHIPS [Children in Need of Protection or Services] cases in the broader perspective of the whole range of issues concerning families and children in court."[471] Others were to implement a planning program involving new approaches to process CHIPS cases, a judicial training program to improve court oversight, an automated case management system, and a network for improving services to members of Native American tribes.[472] Four themes underlying these proposals were to ensure that cases are treated within the context of an overall family dynamic, the interests of all participants are represented, judicial oversight is made more consistent, and cases are resolved more quickly to speed permanent placement.[473]

The state has supported CASA programs, offered multidisciplinary training opportunities, and begun mentoring services for parents. The Wisconsin Supreme Court now requires that GALs attend approved classes before being eligible to represent children; several parties are cooperating to develop a training curriculum for GALs. The state has also undertaken a variety of reforms through court improvement project grants, including mediation, mentoring, and training programs, an initiative to expedite fulfillment of children's permanency plans, a project to improve TPR procedures, a review and assessment of judicial intervention in CHIPS cases, expansion of database links between interested parties, and use of videoconferencing.[474] With federal support, the Milwaukee County Children's Court has implemented "a case processing strategy that minimizes the courts' involvement in stabilizing families and reduces the time it takes to move a child through the court system to a permanent and safe home within 12 months, with at least 50 percent reaching permanency within six months."[475]

Glossary

ADR — alternate dispute resolution
CASA — court appointed special advocates
CHIPS — children in need of protection or services
CINA — children in need of aid
FGC — family group conference
FCRB — foster care review boards
GAL — guardian ad litem
TPR — termination of parental rights

About the Author

Doug Bandow, senior fellow at the Cato Institute, is widely regarded as one of America's most incisive observers of current events. His weekly column is published by major newspapers across the country, and he writes regularly for leading publications such as *Fortune* magazine. In addition to being a prolific author, Bandow speaks frequently at academic conferences, on college campuses, and to business groups. He has appeared on many national television and radio shows, from *Crossfire* to *Oprah*. Bandow speaks and writes on such diverse topics as foreign aid, religion, environmental protection, foreign policy, education, and the drug war. Bandow, who holds a B.S. in economics from Florida State University and a J.D. from Stanford, worked in the Reagan administration as special assistant to the president and has also served as editor of the political magazine *Inquiry*.

Notes

1. Conna Craig and Derek Herbert, "The State of the Children: An Examination of Government-Run Foster Care," National Center for Policy Analysis, NCPA Report No. 210, August 1997, p. 1.
2. Somini Sengupta, "Foster Care Rolls in New York City Drop to Their Lowest Levels Since the 1980s," *New York Times*, December 6, 1999, p. A36.
3. "Who Killed Brianna?" *Washington Times*, January 21, 2000, p. A16; Sari Horwitz, "Agency Irate Over Return of Toddler to Mother," *Washington Post*, January 11, 2000, pp. B1, B7.
4. Susan Orr, "Child Protection at the Crossroads: Child Abuse, Child Protection, and Recommendations for Reform," Reason Public Policy Institute, Policy Study No. 262, October 11, 1999, p. 25.
5. Howard Husock, "How the Agency Saved My Father," *City Journal*, Spring 1999, p. 56. See also U.S. Advisory Board on Child Abuse and Neglect, *A Nation's Shame: Fatal Child Abuse and Neglect in the United States*, (Washington, D.C.: U.S. Government Printing Office, 1995).
6. Ching-Tung Wang and Deborah Daro, "Current Trends in Child Abuse Reporting and Fatalities: The Results of the 1997 Annual Fifty State Survey," Center on Child Abuse Prevention Research, Working Paper No. 808, 1998, p. 3.
7. Orr, p. 1.
8. *Ibid.*, p. 25.
9. The Advisory Committee for the Virginia Court Improvement Program, "Report of the Advisory Committee for the Virginia Court Improvement Program—Foster Care and Adoption: 1995–1996 Assessment," Office of the Executive Secretary, Supreme Court of Virginia, December 1996, p. 4.
10. Carol Stevenson, *et al.*, "The Juvenile Court: Analysis and Recommendations," *The Future of Children*, Vol. 6, No. 3 (Winter 1996), p. 4.
11. Hunter Hurst, *et al.*, "Ohio Family Court Feasibility Study," (Pittsburgh, PA: National Center for Juvenile Justice, May 5, 1997), p. 1. For a history of juvenile courts, see Sanford Fox, "The Early History of the Court," *The Future of Children*, Vol. 6, No. 3 (Winter 1996), pp. 29–39.
12. Toshio Tatara, *Characteristics of Children in Substitute and Adoptive Care: Based on FY 82 and FY 90 Data* (Washington, D.C.: American Public Welfare Association, 1993), pp. 56–57.
13. See, e.g., Stevenson, *et al.*, pp. 6–13; Peter Greenwood, "Responding to Juvenile Crime: Lessons Learned," *The Future of Children*, Vol. 6, No. 3 (Winter 1996), pp. 75–85. The juvenile court process is described in detail in Howard Snyder, "The Juvenile Court and Delinquency Cases," *The Future of Children*, Vol. 6, No. 3 (Winter 1996), pp. 53–63.
14. See, e.g., Stevenson, pp. 13–15; David Steinhart, "Status Offenses," *The Future of Children*, Vol. 6, No. 3 (Winter 1996), pp. 86–99.
15. They account for a larger proportion in some states—29 percent in California, for instance. H. Ted Rubin, "The Nature of the Court Today," *The Future of Children*, Vol. 6, No. 3 (Winter 1996), p. 44.
16. Hurst, *et al.*, p. 3. Rubin, p. 40–52, provides a survey of today's juvenile judicial process.
17. Rubin, pp. 42–43; Barbara Babb, "Where We Stand: An Analysis of America's Family Law Adjudicatory Systems and the Mandate to Establish Unified Family Courts," *Family Law Quarterly*, Vol. 32, No. 1 (Spring 1998), pp. 38–40, 51–65.
18. See, e.g., Harris, pp. 220–25.

19. Criticism of the system was often quite sharp. See, e.g., Michael Wald, "State Intervention on Behalf of 'Neglected' Children: Standards for Removal of Children From Their Homes, Monitoring the Status of Children in Foster Care and Termination of Parental Rights," *Stanford Law Review*, Vol. 28 (April 1976), pp. 636–90.
20. Mark Hardin, "Responsibility and Effectiveness of the Juvenile Court in Handling Dependency Cases," *The Future of Children*, Vol. 3, No. 6 (Winter 1996), p. 113.
21. John Martin, *et al.*, "An Assessment of Wisconsin State Court Performance in Cases Involving Children in Need of Protection or Services," Center for Public Policy Studies (Denver, CO: April 28, 1997), p. i.
22. Hardin, pp. 114, 115. See also Mark Hardin, "Child Protection Cases in a Unified Family Court," *Family Law Quarterly*, Vol. 32, No. 1 (Spring 1998), pp. 154–60; Diane Painter, "Missouri Juvenile Court Improvement Project for Child Abuse and Neglect Cases: Second Annual Report," Supreme Court of Missouri, February 28, 1997, pp. 7–8. A separate issue of enormous complexity is the status of Native American children, who are covered by separate legislation. See, e.g., Janet Lahti, *et al.*, "An Assessment of the Oregon State Court System's Compliance with P.L. 96–272 and Related Laws," Juvenile Rights Project, May 1997, p. 4.
23. Stevenson, p. 16.
24. The Citizens Committee on the Juvenile Court Support Fund, "Court Improvement Project, State of Illinois: Annual Report Including Assessment Findings, Recommendations and Implementation Plan," (Chicago, IL: August 1, 1997), pp. 8–9.
25. Hunter Hurst, *et al.*, "Pennsylvania Court Improvement Project Final Report," (Pittsburgh, PA: National Center for Juvenile Justice , August 4, 1998), p. 1.
26. Hurst, *et al.*, "Oklahoma Court Assessment Report," p. 26.
27. *Ibid.*
28. See, e.g., Steve Bouch, *et al.*, "Hawaii Court Improvement Project: Final Report," Court Services Division, National Center for State Courts, June 1996, pp. 13, 24–28; Gwendolyn Lyford, *et al.*, "New Hampshire Juvenile Court Improvement Project," Court Services Division, National Center for State Courts, December 1996, p. 28; Kris Sahonchik, *et al.*, "State of Connecticut Court Improvement Report," National Child Welfare Resource Center for Organizational Improvement, May 1996, p. 24; Grasso, p. 83.
29. National Council of Juvenile and Family Court Judges, p. 10.
30. Bruce Green and Bernardine Dohrn, "Foreword: Children and the Ethical Practice of Law," *Fordham Law Review*, Vol. LXIV, No. 4 (March 1996), p. 1286.
31. Hardin, "Responsibility and Effectiveness of the Juvenile Court in Handling Dependency Cases," p. 118.
32. *Ibid.*, pp. 118–19.
33. Lahti, *et al.*, p. 6. Other states make the same point. See, e.g., West Virginia Court Improvement Oversight Board, "Court Performance in Child Abuse and Neglect Cases: Assessment Report and Improvement Plan," Supreme Court Administrative Office, July 18, 1996, pp. 2–12.
34. Hardin, "Responsibility and Effectiveness of the Juvenile Court in Handling Dependency Cases," p. 114.
35. A detailed description of family court decision-making is provided by Hardin, "Child Protection Cases in a Unified Family Court," pp. 147–99. The role of each hearing is reviewed in National Council of Juvenile and Family Court Judges, *Resource Guidelines: Improving Court Practice in Child Abuse & Neglect Cases*, (Reno, NV: National Council of Juvenile and Family Court Judges, Spring 1995), pp. 29–105.
36. National Council of Juvenile and Family Court Judges, p. 13.
37. Wald, pp. 665–72.
38. See, e.g., Angela Lau, "Youths Find Freedom Comes With a Price: Many are Ill-Prepared

to Scale even Routine Hurdles of Adult Life," *San Diego Union-Tribune*, May 17, 1999, p. A11.

39. See, e.g., U.S. General Accounting Office, *Child Welfare: Complex Needs Strain Capacity to Provide Services*, GAO/HEHS-95-208, September 1995, pp. 14–15. Obviously adoption is no panacea, and critics worry about abuse by adoptive parents and separation from siblings. See, e.g., Troy Farmer, "Protecting the Rights of Hard to Place Children in Adoption," *Indiana Law Journal*, Vol. 72 (Fall 1997), pp. 1165-85. Adoptive parents may also be ill-prepared to care for special needs or troubled children, especially if problems, such as prior abuse, have not been disclosed. Many children removed from abusive or neglectful homes suffer from behavioral, mental, physical, or a combination of difficulties. The number exhibiting no problems at all has been falling, at least in Oregon. Child Welfare Partnership, "Cohort II: A Study of Families with Children Entering Foster Care in Oregon Between 1991 and 1993," Portland State University, July 1994, pp. 7–9. Some of these problems are what have helped to frustrate family reunification efforts. Roger Levesque, "The Failures of Foster Care Reform: Revolutionizing the Most Radical Blueprint," *Maryland Journal of Contemporary Issues*, Vol. 6, 1996, p. 24. Moreover, the result of nondisclosure has been a rise in "wrongful adoption" lawsuits. Madelyn Freundlich and Lisa Peterson, *Wrongful Adoption: Law, Policy, & Practice* (Washington, D.C: Child Welfare League of America, 1998); Madelyn DeWoody, *Adoption and Disclosure: A Review of the Law* (Washington, D.C: Child Welfare League of America, 1993); See also: "When Love Is Not Enough: Toward A Unified Wrongful Adoption Tort," *Harvard Law Review*, Vol. 105 (May 1992), pp. 1761–79.
40. Ann Sullivan, "Adoption and Privatization: An Issue Brief," (Washington, D.C.: Child Welfare League of America, 1998), p. 22.
41. *Ibid.*, p. 22.
42. See, e.g., Wald, pp. 626–27; Harris, pp. 237–40.
43. Children's Rights Project, *A Force for Change* (New York, NY: American Civil Liberties Union, 1993), p. 2.
44. Carol Statuto Bevan, "Foster Care: Too Much, Too Little, Too Early, Too Late," (Washington, D.C.: National Council for Adoption, 1996), p. 22.
45. Tatara, p. 107. See also *Analysis of State Child Welfare Data: VCIS Survey 1990 Through 1994, Final Report*, pp. III-78 to III-82 and Toshio Tatara, *Characteristics of Children in Substitute and Adoptive Care: A Statistical Summary of the VCIS National Child Welfare Data Based on FY86 Data* (Washington, D.C.: American Public Welfare Association, 1990), p. 74–75.
46. Richard McKenzie, "Rethinking Orphanages for the 21st Century," Center of the American Experiment, 1997, p. 6. Although foster parents may end up closer than the birth parents to their children, they possess none of the same legal rights, giving them no right to reclaim a child. See, e.g., Kristin Brandon, "The Liberty Interests of Foster Parents and the Future of Foster Care," *University of Cincinnati Law Review*, Vol. 63, No. 1 (Fall 1994).
47. Berger, p. 369.
48. Court Improvement Advisory Committee, p. 4.
49. Orr, p. 19.
50. Fred H. Wulczyn, Allen W. Harden, and Robert M. Goerge, *Foster Care Dynamics: 1983–1994* (Chicago, IL.: The Chapin Hall Center for Children at the University of Chicago, July 1997), p. ix.
51. *Ibid.*, p. viii.
52. *Ibid.*
53. Orr, p. 1. Reported cases grew by a staggering 20 percent a year between 1976 and 1980, and 13 percent annually during the 1980s. Richard Barth, "The Juvenile Court and Dependency Cases," *The Future of Children*, Vol. 6, No. 3 (Winter 1996), p. 101.
54. By one estimate, every year between 1983 and 1993, entrances exceeded exits. Barth, p. 104.
55. Deloitte & Touche Consulting Group, "Texas

Supreme Court Task Force on Foster Care: Court Assessment Final Report," November 9, 1996, pp. 10–11.

56. Craig and Herbert, p. 9.
57. National Council of Juvenile and Family Court Judges, p. 14.
58. David Herring, "Inclusion of the Reasonable Efforts Requirement in Termination of Parental Rights Statutes: Punishing the Child for the Failures of the State Child Welfare System," *University of Pittsburgh Law Review*, Vol. 54 (Fall 1992), pp. 144–51.
59. Cited in U.S. General Accounting Office, p. 14.
60. *Ibid.*, pp. 14–15.
61. Commission on the Homeless, *The Way Home: A New Direction in Social Policy* (New York, NY: Report of the New York City Commission on the Homeless, February 1992), p. B-6.
62. Orr, p. 13.
63. Conna Craig, "'What I Need Is a Mom'," *Policy Review*, Summer 1995, p. 42.
64. See, e.g., John M. Johnson, "The Changing Concept of Child Abuse and Its Impact on the Integrity of Family Life," in Joseph Peden and Fred Glahe, eds., *The American Family and the State* (San Francisco, CA: Pacific Research Institute for Public Policy, 1986), pp. 263–72. Another consequence is greater state intrusion into the lives even of families that remain intact. Johnson, pp. 273–74.
65. *Ibid.*, p. 272.
66. See, e.g., Wang and Daro, pp. 2–3.
67. Orr, p. 7.
68. *Ibid.*
69. Berger, p. 368.
70. For instance, neglect could entail failing to foresee harm, to protect from possible harm, or to provide care necessary for a child "to thrive." Orr, p. 9.
71. Wang and Daro, p. 4.
72. Child Welfare Partnership, pp. 3–4.
73. Orr, p. 27. Wald, "State Intervention," pp. 1000–04, discusses the nature of the vagueness.
74. Stevenson, *et al.*, p. 16.
75. Michael Wald, "State Intervention on Behalf of 'Neglected' Children: A Search for Realistic Standards," *Stanford Law Review*, Vol. 27 (April 1975), p. 987.
76. There have been more than enough proposals, reaching back to Plato, to socialize the raising of children in one way or another. But Wald rightly contends that "Our political commitment to diversity of views, lifestyles, and freedom of religion is promoted by allowing families to raise children in a wide variety of living situations and with diverse childrearing patterns," Wald, "State Intervention," p. 992.
77. See, e.g., Orr, p. 2; Annette Appell, "Protecting Children or Punishing Mothers: Gender, Race, and Class in the Child Protection System," *South Carolina Law Review*, Vol. 48, No. 3 (Spring 1997), pp. 577–613. Some cases receive significant public attention. See, e.g., "Couple Win Racially Charged Custody Fight," *Washington Post*, January 5, 2000, p. A11; William Claiborne, "Powerful Couple Wins Child Custody Case," *Washington Post*, October 20, 1999, p. A3.
78. Wald, "State Intervention," p. 992.
79. *Ibid.*, p. 987, fn. 14. After all, Wald writes, "there is substantial evidence that, except in cases involving very seriously harmed children, we are unable to improve a child's situation through coercive state intervention," Wald, "State Intervention," p. 993.
80. *Ibid.*, pp. 993–1000.
81. Levesque, p. 7. See also David Hasemyer, "Lax Licensing Laws Beleaguer Foster Care," *San Diego Union-Tribune*, April 26, 1999, p. A1. Equally serious problems can occur with group homes, a leading alternative to foster parents. David Hasemyer, "Group Dynamics: Seeking Solutions to Improve the Lives of Foster Children," *San Diego Union-Tribune*, May 3, 1999, p. A1; "Save Foster Care System," *Los Angeles Daily Journal*, June 4, 1998.
82. Falcon Baker, *Saving Our Kids From Delinquency, Drugs, and Despair: Solutions Through Prevention* (New York, NY: Harper-Collins, 1991), p. 280.

83. Johnson, p. 275.
84. Orr, p. 27.
85. Wang and Daro, p. 4; Brandon, pp. 408–09; Orr, pp. 9, 26. There is also evidence that alcohol and drug problems may have gotten worse, even if not more widespread. Child Welfare Partnership, p. 11; Marla Gottlieb Zwas, "Kinship Foster Care: A Relatively Permanent Solution," *Fordham Urban Law Journal*, Vol. 20 (Winter 1993), p. 347. In New York, for instance, Vera Institute researchers found that "The vast majority of infants and young children whose records we reviewed entered the system as a result of parental substance abuse," Molly Armstrong, *et al.*, "New York State Family Court Improvement Study," Vera Institute, March 1997, p. 34.
86. Orr, p. 28.
87. *Ibid.*, pp. 24–25.
88. By far the greatest delay is in deciding to set adoption as the child's permanency plan. Then the state must move to terminate parental rights and the court must grant the petition. Office of Inspector General, "Barriers to Freeing Children for Adoption," (Washington, D.C.: Department of Health and Human Services, February 1991), p. 7.
89. Craig and Herbert, p. 9.
90. *Ibid.*, p. 6.
91. For a general discussion of the problem, see Bevan, pp. 41–45; Office of Inspector General, pp. 11–12. Technically the law does not require that states undertake reasonable efforts, but that they include reasonable efforts in their state plans. However, many states have incorporated the requirement in law. Michael Bufkin, "The 'Reasonable Efforts' Requirement: Does It Place Children At Increased Risk of Abuse or Neglect?," *University of Louisville Journal of Family Law*, Vol. 35 (Spring 1996/1997), p. 362. In particular, some states have made reasonable efforts a condition for granting TPR; many judges implicitly require it as well. See Herring, pp. 155–59, 163–80.
92. West Virginia Court Improvement Oversight Board, p. ES2. See also pp. 33–34.
93. Foster Care and Adoption Task Force, "Minnesota Supreme Court Foster Care and Adoption Task Force: Final Report," Minnesota Supreme Court, January 1997, p. 61.
94. Meryl Schwartz, "Reinventing Guardianship: Subsidized Guardianship, Foster Care, and Child Welfare," *New York University Review of Law and Social Change*, Vol. 22, No. 2 (June 1996), p. 452.
95. Herring, pp. 158–60.
96. Quoted in Amanda Spake, "Adoption Gridlock," *U.S. News & World Report*, June 22, 1998. Some judges themselves complain about this misinterpretation. See, *e.g.*, Leonard Edwards, "Improving Implementation of the Federal Adoption Assistance and Child Welfare Act of 1980," in National Council of Juvenile and Family Court Judges, *Resource Guidelines: Improving Court Practice in Child Abuse & Neglect Cases* (Reno, NV: National Council of Juvenile and Family Court Judges, Spring 1995), p. 143.
97. Brigitte Berger, "On the Limits of the Welfare State: The Case of Foster Care," in Peden and Glahè, p. 365.
98. Judith Kaye and Jonathan Lippman, *Family Justice Program Phase* 2, (New York, NY: New York State Unified Court System, February 1998), p. 16.
99. West Virginia Court Improvement Oversight Board, pp. ES1-2, 29–68.
100. Leonard Edwards, "The Future of the Juvenile Court: Promising New Directions," *The Future of Children*, Vol. 6, No. 3 (Winter 1996), p. 137.
101. Some analysts even advocate that judges "be educators and spokespersons in their communities on behalf of abused and neglected children" and "take action to rally the community and help garner resources," Stevenson, *et al.*, p. 19. However, judges should not seem to become just another interest group. Instead, they should attempt to reflect a broader outlook: what is the best policy to simultaneously protect children,

promote families, and respect taxpayers?

102. Stevenson, *et al.*, p. 21.
103. Hurst, *et al.*, "Ohio Family Feasibility Study," p. 8.
104. Jeffrey Kuhn, "A Seven-Year Lesson on Unified Family Courts: What We Have Learned Since the 1990 National Family Court Symposium," *Family Law Quarterly*, Vol. 32, No. 1 (Spring 1998), p. 67.
105. Ross, pp. 16–17.
106. *Ibid.*, pp. 15–28.
107. See, e.g., Hurst, *et al.*, "Ohio Family Court Feasibility Study," pp. 5–14; Babb, pp. 42–49.
108. Babb, pp. 37–46.
109. Hardin, "Child Protection Cases in a Unified Family Court," pp. 198–99.
110. Edwards, "The Future of the Juvenile Court: Promising New Directions," p. 133.
111. See, e.g., Hardin, "Child Protection Cases in a Unified Family Court," pp. 197–99; Mark Hardin, *et al.*, *A Second Court That Works: Judicial Implementation of Permanency Planning Reforms* (Washington, D.C.: American Bar Association, 1995)
112. Hardin, *et al.*, *A Second Court That Works*, p. 31.
113. Office of the Court Administrator, p. 6.
114. Edwards, p. 133.
115. Hurst, *et al.*, "Ohio Family Court Feasibility Study," p. 15.
116. Hardin, "Child Protection Cases in a Unified Family Court," p. 191.
117. *Ibid.*, pp. 191–92.
118. Kuhn, pp. 68–69.
119. For a detailed discussion of integrating mediation into the child dependency litigation, see National Council of Juvenile and Family Court Judges, pp. 133–38.
120. Stevenson, *et al.*, p. 22; Edwards, pp. 133–35; Lyford, *et al.*, "New Hampshire Juvenile Court Improvement Project," pp. 47–48; Grasso, pp. 106–08. Not everyone is a fan. Some judges complain that the issues are either too important to be decided by parties other than judges or are not amenable to voluntary resolution since the problem is child abuse rather than a common civil dispute. The Administrative Office of the Courts of New Mexico, *et al.*, p. 110. These arguments are not without merit, but arbitration/mediation can address many issues successfully and be used with appropriate judicial oversight.
121. Ross, p. 19.
122. Kuhn, pp. 73–75.
123. Edwards, p. 135; Grasso, p. 105.
124. Stevenson, *et al.*, p. 22.
125. Edwards, p. 136; The Administrative Office of the Courts of New Mexico, *et al.*, p. 109.
126. Hardin, *et al.*, *A Second Court That Works*, p. 61.
127. Stevenson, *et al.*, p. 19.
128. National Council of Juvenile and Family Court Judges, pp. 88–89.
129. Boyer, p. 379.
130. *Ibid.*
131. *Ibid.*, pp. 391–96.
132. *Ibid.*, pp. 396–401.
133. Stevenson, *et al.*, p. 18. Boyer argues for judicial action if resource constraints, bureaucratic misbehavior, or administrative inadequacies lead to decisions that are not in a child's best interests. Boyer, pp. 417–20.
134. National Council of Juvenile and Family Court Judges, p. 66.
135. Hardin, "Responsibility and Effectiveness of the Juvenile Court in Handling Dependency Cases," p. 121.
136. See some of the cases that have gone to court. Edwards, "Improving Implementation of the Federal Adoption Assistance and Child Welfare Act of 1980," pp. 144–46.
137. Boyer, pp. 430–31.
138. Edwards, "Improving Implementation of the Federal Adoption Assistance and Child Welfare Act of 1980," p. 156.
139. See, e.g., Boyer, pp. 426–28.
140. Hardin, "Responsibility and Effectiveness of the Juvenile Court in Handling Dependency Cases," p. 121.
141. *Ibid.*
142. *Ibid.*, pp. 121–22.
143. Hardin, *et al.*, *A Second Court That Works*, p.

113.

144. Stevenson, p. 19; Edwards, "Improving Implementation of the Federal Adoption Assistance and Child Welfare Act of 1980," p. 151.
145. Kuhn, pp. 77–78.
146. National Council of Juvenile and Family Court Judges, p. 19.
147. National Council of Juvenile and Family Court Judges, p. 19; Hardin, "Responsibility and Effectiveness of the Juvenile Court in Handling Dependency Cases," pp. 117–18.
148. National Council of Juvenile and Family Court Judges, pp. 21–22.
149. *Ibid.*, pp. 29–105.
150. *Ibid.*, pp. 42, 51, 62, 74, 84. The National Council proposes 60 and 30 minutes as the respective minimums for TPR and adoption; pp. 98, 104.
151. See, e.g., National Council of Juvenile and Family Court Judges, p. 89.
152. *Ibid.*, pp. 19–21; Stevenson, p. 18; Hardin, *et al.*, *A Second Court That Works*, pp. 60–61; Hardin, "Child Protection Cases in a Unified Court," p. 194.
153. Hardin, "Responsibility and Effectiveness of the Juvenile Court in Handling Dependency Cases," p. 117. For a more detailed discussion of the role of pretrial settlement conferences, see National Council of Juvenile and Family Court Judges, pp. 132–33.
154. Lyford, *et al.*, "New Hampshire Court Improvement Project," p. 21.
155. Kuhn, pp. 79, 80.
156. Hardin, "Child Protection Cases in a Unified Family Court," p. 193.
157. For a description as to how competent counsel can help shape child dependency proceedings, see Hardin, *et al.*, *A Second Court That Works*, pp. 99–105; National Council of Juvenile and Family Court Judges, p. 23.
158. Payment delays can have much the same effect. Of course, judges should scrutinize attorneys' charges, especially for substandard work. Hardin, "Child Protection Cases in a Unified Family Court," pp. 196–97.
159. Stevenson, *et al.*, p. 19.
160. See, e.g., the recommendations of a Fordham University Law School conference. "Proceedings of the Conference on Ethical Issues in the Legal Representation of Children," *Fordham Law Review*, Vol. LXIV, No. 4 (March 1996), pp. 1301–98. Representing children raises unique issues in almost any context. See, e.g., Nancy Moore, "Conflicts of Interests in the Representation of Children," *Fordham Law Review*, Vol. 64 (March 1996), pp. 1819–56.
161. How much weight to give to the child's views obviously remains contested. For a detailed discussion of this issue, see Leonard Edwards and Inger Sagatun, "Domestic Violence, Child Abuse, and the Law: Who Speaks for the Child?", *University of Chicago Law School Roundtable*, Vol. 2, 1995, p. 67; Bernd Walter, *et al.*, "'Best Interests' In Child Protection Proceedings: Implications and Alternatives," *Canadian Journal of Family Law*, Vol. 12, No. 2 (Spring 1995), pp. 391–400.
162. See, e.g., Anne Krueger, "Volunteers Stand Up For Kids," *San Diego Union-Tribune*, May 10, 1999, p. A6.
163. For a more detailed discussion of such topics, see Hardin, "Child Protection Cases in a Unified Family Court," pp. 174–85; National Council of Juvenile and Family Court Judges, p. 23; Edwards, "Improving Implementation of the Federal Adoption Assistance and Child Welfare Act of 1980," pp. 147–48.
164. See, e.g., Paul Knepper and Shannon Barton, "Statewide Cross-Training as a Means of Court Reform in Child Protection Proceedings," *Brandeis Journal of Family Law*, Vol. 36 (Fall 1997), p. 511.
165. Kuhn, p. 70.
166. See, e.g., *Ibid.*, pp. 88–90.
167. Hardin, *et al.*, *A Second Court That Works*, p. 112.
168. Orr, p. 28.
169. Her arguments are powerful though controversial. As a matter of principle, abuse of one's children should be treated as a crime, like abuse of someone else's children; such

prosecutions would treat the issue as a matter of justice rather than illness, emphasize personal moral responsibility, employ a higher burden of proof, limit unwarranted intervention in family affairs, and publicize the names of abusers. Orr, pp. 7, 27–28. Such an approach would work less well for neglect, however, since there is no corresponding obligation to nurture other people's children. A modest countervailing trend is evident in the increasing number of states that are holding parents responsible for the actions (ranging from criminal to status offenses) of their children. Juvenile crime, like parental abuse, then becomes an issue of parenting instead of (or as well as) one of justice. Not surprisingly, this approach is controversial. Stevenson, *et al.*, p. 21; Dick Boland, "When Mom Is Turned Into a Jailbird," *Washington Times*, December 25, 1999, p. A12. For an example of this argument, see Mark Moore, "The Future of the Juvenile Court: A Theoretical Framework that Fits," *The Future of Children*, Vol. 6, No. 3 (Winter 1996), pp. 140–46.

170. Wald, "State Intervention," p. 1005. He goes on to specify the types of harms, though even the most obvious ones, such as sexual abuse, suffer from frustrating ambiguity in practice. Wald, "State Intervention," pp. 1008–38. University of South Carolina law school professor Annette Appell seems to advocate the same broad approach when she calls on government "to refocus itself away from punishing mothers and toward protecting children," Appell, p. 613.
171. Orr, p. 27. In fact, other countries may be more cautious than the U.S. Observes Donald Duquette of the University of Michigan Law School: "The decision to place a child on the Child Abuse Registry is done more carefully than is generally the case in the United States," Donald Duquette, "Child Protection Legal Process: Comparing the United States and Great Britain," *University of Pittsburgh Law Review*, Vol. 54 (Fall 1992), p. 254.
172. Orr, pp. 10–12.
173. Craig and Herbert, p. 15; Conna Craig and Derek Herbert, *Institute for Children Memorandum*, March 17, 1997.
174. Foster Care and Adoption Task Force, pp. 61–62.
175. For a summary of the measure, see Karen Spar, "Adoption Promotion Legislation in the 105th Congress," *CRS Report for Congress*, 97-491 EPW, November 24, 1997. For a discussion of the competing bills before final passage, see Patrick Fagan, "Reforming Foster Care and Adoption: Why the Senate Version is Flawed," *Heritage Foundation Issue Bulletin*, No. 247, October 8, 1997; Patrick Fagan and Dorothy Hanks, "It Takes a Family: The Adoption Promotion Act of 1997," *Heritage Foundation Executive Memorandum*, No. 477, April 23, 1997.
176. Orr, pp. 12–14.
177. Such funding could obviously be sent with or without strings, options discussed in Bevan, pp. 52–55.
178. Orr, p. 29. If, as Orr suggests, government intervened in fewer cases, but criminalized the remainder of them, services could also be made voluntary, since they might seem more attractive and less threatening if not combined with the threat to remove a child from the home.
179. Baker, pp. 282–83.
180. Shelley Waters Boots and Rob Green, "Family Care of Foster Care? How State Policies Affect Kinship Caregivers," *Urban Institute New Federalism Issues and Options for States*, Series A, No. A-34, July 1999; Barth, p. 106. For a look at the promise and problems of kinship care, see Zwas, pp. 343–73.
181. See generally Bevan, pp. 23–29; McKenzie, pp. 10–13. Once the decision is made not to reunite the family, there are only a few cases where alternatives such as long-term foster care are to be preferred to adoption. See, e.g., National Council of Juvenile and Family Court Judges, pp. 81–82.
182. For fears in this regard, see Berger, pp. 371–73.
183. See, e.g., the discussion in Child Welfare

Partnership, pp. 14–18.

184. Keith Wiens, "State v. Parent Termination of Parental Rights: Contradictory Actions by the Ohio Legislature and the Ohio Supreme Court in 1996," *Capital University Law Review*, Vol. 26, 1997, p. 682.
185. Wiens, p. 683.
186. Child Welfare Partnership, p. 13. See also Bufkin, pp. 373–78.
187. Armstrong, *et al.*, p. 40.
188. Robert G. St. Pierre, *et al.*, "National Impact Evaluation of the Comprehensive Development Program: Final Report," (Cambridge, MA: Abt Associates, June 1997), pp. 1-9 to 1-10, 4-8 to 4-9; Barth, p. 103. Nor do states uniformly provide such aid. In substantiated cases of maltreatment, the percentage receiving some form of child protective services ranged from 6 to 100 percent, with an average of 70 percent. More than 300,000 cases of child abuse received no special attention. Wang and Daro, p. 6.
189. Quoted in Orr, p. 20.
190. Child Welfare Partnership, p. 6.
191. Sometimes renewed violence was predictable, sometimes not. John Gibeaut, "Nobody's Child: The Way Americans Go About Caring for Abused and Neglected Kids is a Mess," *American Bar Association Journal*, Vol. 83 (December 1997), p. 44. Richard Gelles, Director of the University of Rhode Island's Family Violence Research Program, also points to the danger to children. Bufkin, p. 375. Geller originally supported efforts at family preservation, but now believes that policy is "misguided," Bufkin, p. 373.
192. See, e.g., Child Welfare Partnership, p. 24.
193. See generally Bevan, pp. 23–29; Christina Dugger Sommer, "Empowering Children: Granting Foster Children the Right to Initiate Parental Rights Termination Proceedings," *Cornell Law Review*, Vol. 79 (July 1994), p. 1211–14. For examples of instances when lengthy litigation over "reasonable efforts" blocked TPR and adoption for needy children, see Herring, pp. 179–94.
194. Unfortunately, reports Richard Barth of the University of California (Berkeley): "An early reunification from foster care to the biological family does not indicate that these families have fewer problems or that children will be safe," Barth, p. 106.
195. Sommer, p. 1212. Further evidence that present priorities are askew is the fact that "no state termination statute provides that domestic violence against a mother constitutes per se parental unfitness—even where the most atrocious abuse has occurred," Amy Haddix, "Unseen Victims: Acknowledging the Effects of Domestic Violence on Children Through Statutory Termination of Parental Rights," *California Law Review*, Vol. 84 (May 1996), p. 768. Only three states extinguish parental rights after the murder of the other parent.
196. Herring, pp. 195–202. Unfortunately, in most cases, provision of services at this point after years of failed parenting is unlikely to rehabilitate the parent or restore the family bond; it would, however, further delay the child's move to a permanent home. "Parental rights can only be protected effectively by requiring reasonable efforts to be made early in a case when a family relationship still exists," Herring, p. 209. The best argument for continuing to consider reasonable efforts in TPR proceedings is to act as an incentive for agencies to fulfill their statutory or regulatory obligation. But, in practice, this appears to have little deterrent effect. (After all, the burden falls primarily on children, and the agency may benefit financially if the child remains in foster care.) Some form of direct sanctions against the agency or liability to biological parents might have greater effect. Herring, p. 205–06.
197. Schwartz, p. 452.
198. Brandon.
199. Schwartz, p. 456.
200. Kathi Grasso, *et al.*, "Michigan Court Improvement Program Assessment of Probate Courts' Handling of Child Abuse and Neglect Cases: Final Report," American Bar Association Center on Children and the Law

and National Center for State Courts, 1997, p. 111. Indeed, 10 states already use subsidized (through state, not federal, funds) guardianship as one permanency goal. Schwartz, pp. 470–73.

201. See, e.g., Annette Ruth Appell, "Blending Families Through Adoption: Implications for Collaborative Adoption Law and Practice," *Boston University Law Review*, Vol. 75 (September 1995), pp. 997–1061.
202. Grasso, p. 112.
203. Jill Sheldon, "50,000 Children Are Waiting: Permanency, Planning and Termination of Parental Rights Under the Adoption Assistance and Child Welfare Act of 1980," *Boston College Third World Law Journal*, Vol. 17, No. 1 (Winter 1997), pp. 85–88.
204. See, e.g., Sommer, pp. 1200–62.
205. For a detailed discussion of this issue, see Teresa Lazo-Miller, "Foster Parents, Children and Youth Services, and the Court: Can Foster Children Escape the Bermuda Triangle?," *Widener Journal of Public Law*, Vol. 6, 1996, pp. 181–226.
206. Barbara Atwell, "'A Lost Generation': The Battle for Private Enforcement of the Adoption Assistance and Child Welfare Act of 1980," *University of Cincinnati Law Review*, Vol. 60, No. 3 (1992) pp. 593–647. See also Levesque, p. 33. Obviously, there would be little argument for separate lawsuits over "reasonable efforts" if the issue were being satisfactorily resolved in existing proceedings. This approach would then be a second best to fixing the existing system.
207. See, e.g., Patrick Fagan, "Promoting Adoption Reform: Congress Can Give Children Another Chance," *Heritage Foundation Backgrounder*, No. 1080, May 6, 1996, p. 11; Craig and Herbert, "The State of the Children," pp. 12–15.
208. Laura Meckler, "U.S. Adopting More Babies Abroad," Associated Press, November 24, 1999.
209. Lesbian and Gay Rights Project, American Civil Liberties Union, "In the Child's Best Interests: Defending Fair and Sensible Adoption Policies," April 1998; Lydia Nayo, "In Nobody's Best Interests: A Consideration of Absolute Bans on Sexual Minority Adoption From the Perspective of the Unadopted Child," *University of Louisville Journal of Family Law*, Vol. 35 (Winter 1996/1997), pp. 25–95. The issue of homosexuals as foster parents also generates controversy. See, e.g., Nancy Polikoff, "Resisting 'Don't Ask, Don't Tell' in the Licensing of Lesbian and Gay Foster Parents: Why Openness Will Benefit Lesbian and Gay Youth," *Hastings Law Journal*, Vol. 48, No. 6 (August 1997), pp. 1183–93.
210. There seems little doubt that a traditional heterosexual family is a better adoptive home in theory, though each adoption should be judged individually, based on what is in the best interest of a particular child. Thus, one might decide differently depending upon the availability of sufficient numbers of traditional two-parent homes.
211. This issue raises touchy racial and political issues. See, e.g., Sheldon, pp. 95–96. But the case for moving foster care children into loving, permanent homes is overwhelming. For a discussion of New York's experience, see Barbara McLaughlin, "Transracial Adoption in New York State," *Albany Law Review*, Vol. 60, 1996, pp. 501–38. Adoptions involving Native Americans are an entirely separate process governed by their own federal law, the Indian Child Welfare Act, which gives primacy to tribal decision-making. For a discussion of this issue, see Keri Lazarus, "Adoption of Native American and First Nations Children: Are The United States and Canada Recognizing the Best Interests of the Children?", *Arizona Journal of International and Comparative Law*, Vol. 14, 1997, p. 255. Problem issues include who is a Native American under the Act?
212. For different lists of proposed reforms, see, e.g., Craig and Herbert, "The State of the Children," p. 16; Bevan, pp. 58–63; Fagan, "Promoting Adoption Reform," pp. 28–31; "Child Protection Comes First," *National*

Adoption Reports, Vol. XVIII, Issue No. 2 (February 1997), p. 6.

213. One proposed law comes from the American Legislative Exchange Council, which works with state legislatures.
214. See, e.g., Berger, pp. 374–75.
215. See, e.g., Husock, pp. 38–59.
216. See the discussion by economist Richard McKenzie, who grew up in an orphanage, about the benefits of children's homes. McKenzie, pp. 7–10.
217. Berger, p. 376.
218. For an overview, see Sullivan.
219. See, e.g., William Eggers, "There's No Place Like Home," *Policy Review*, May/June 1997; Patrick Poole, "Privatizing Child Welfare Services: Models for Alabama," Alabama Family Alliance, January 1998, pp. 2–4; Conna Craig, *et al.*, *Blueprint for the Privatization of Child Welfare*, (Los Angeles, CA: Reason Public Policy Institute, 1998), pp. 15–22.
220. Michigan's experience is covered by Mark Michaelsen, *et al.*, *Child Foster Care in Michigan: A Privatization Success Story*, Mackinac Center for Public Policy, June 1993. A more recent discussion of the Michigan program is provided by Craig, *et al.*, pp. 5–9.
221. Poole, p. 8.
222. Berger, p. 379.
223. Diane Boyd Rauber and Sharon S. England, *Court Improvement Progress Report 1999* (Washington, D.C.: American Bar Association, 1999), p. 42.
224. See generally Rauber and England (1999); Diane Boyd Rauber and Sharon S. England, *Court Improvement Progress Report 1998* (Washington, D.C.: American Bar Association, 1998).
225. Rauber and England (1999), pp. 32–36. Similar initiatives were evident in the earlier assessment of state reform efforts. Rauber and England (1998), pp. 24–29.
226. Rauber and England (1999), pp. 24–26. See also Rauber and England (1998), pp. 18–20.
227. Rauber and England (1999), pp. 36–41; Rauber and England (1998), pp. 27–33.
228. See, e.g., Doug Bandow, *The Politics of Envy: Statism As Theology* (New Brunswick, N.J.: Transaction Publishers, 1994); Doug Bandow, *The Politics of Plunder: Misgovernment in Washington* (New Brunswick, N.J.: Transaction Publishers, 1990).
229. Halemba and Siegel, p. xvii.
230. *Ibid.*, pp. xvii–xviii.
231. Perry Hooper, Sr. and Frank Gregory, "Alabama Dependency Cases/Permanency Planning Court Improvement Project," Administrative Office of the Courts, June 1996, VII-1 to VII-28
232. Teresa Carns, *et al.*, "Improving the Court Process for Alaska's Children in Need of Aid," Alaska Judicial Council, October 1996, pp. 81–110.
233. Susanne Di Pietro and Teresa Carns, "Improving the Court Process for Alaska's Children in Need of Aid," *Alaska Law Review*, Vol. 14 (June 1997), pp. 31–32, 15–31.
234. Carns, pp. 129–40.
235. Gregory Halemba and Gene Siegel, "Arizona Court Improvement Project: Final Report," National Center for Juvenile Justice, December 11, 1996, p. vi.
236. Halemba and Siegel, pp. viii–xi, 32.
237. *Ibid.*, p. 28.
238. *Ibid.*, pp. 40–41.
239. *Ibid.*, pp. xiv–xv, 81–88.
240. *Ibid.*, pp. 45–80.
241. Arkansas Supreme Court Ad Hoc Committee On Foster Care and Adoption Assessment, "Report of the Arkansas Supreme Court Ad Hoc Committee On Foster Care and Adoption Assessment: With Findings and Recommendations," February 1997, p. 14.
242. *Ibid.*, pp. 22, 27, 33–34, 48–49, 52, 76–77, 87, 92, 97, 111, 116.
243. Rauber and England (1998), pp. 48–50.
244. Bouch, *et al.*, "California Court Improvement Project Report," pp. 13–88.
245. Laurie Schera, "Child Abuse in Neglect Cases in the Colorado State Courts," Dependency and Neglect Court Assessment Advi-

sory Council, June 27, 1996, pp. i–ii.
246. Sahonchik, *et al.*, pp. 20–25.
247. *Ibid.*, p. 25.
248. *Ibid.*, pp. 25–64.
249. Marsha Miller, *et al.*, "An Assessment of Delaware's Court Performance in Child Welfare Cases with Recommendations for Improvement," Delaware Supreme Court, May 1997, p. 28.
250. *Ibid.*, pp. 29, 39–51, 56–71.
251. *Ibid.*, p. 74.
252. Rauber and England (1998), pp. 59–61.
253. Court Improvement Project Advisory Committee, p. 4.
254. Rauber and England (1999), pp. 86–85.
255. Court Improvement Project Advisory Committee, p. ii.
256. *Ibid.*, pp. ii–iv.
257. Office of the State Courts Administrator, "Florida's Dependency Court Improvement Program Assessment Report: Permanency," (Tallahassee, FL: Office of the State Courts Administrator, August 1997), pp. 29–35, 54–60.
258. Rauber and England (1998), pp. 62–64.
259. Karen Worthington, "Final Report of the Georgia Supreme Court Child Placement Proceedings Project," The Administrative Office of the Courts, August 1996, pp. 9–52.
260. Bouch, *et al.*, "Hawaii Court Improvement Project: Final Report," pp. 8–49. See also Hardin, "Child Protection Cases in a Unified Family Court," pp. 187–90.
261. The Citizens Committee on the Juvenile Court Support Fund, p. 7.
262. *Ibid.*, pp. 7–8.
263. *Ibid.*, p. 8.
264. Indiana Supreme Court, "The Indiana Court Improvement Project, Phase One Final Report: Adjudication of Child Abuse and Neglect Cases in Indiana," June 1997, pp. 22–24.
265. John Haney and Lisa Kay, "Making Reasonable Efforts in Iowa Foster Care Cases: An Empirical Analysis," *Iowa Law Review*, Vol. 81, No. 5 (July 1996), p. 1684.
266. *Ibid.*, p. 1686.
267. Anne Rinkenberger, ed., "Iowa Supreme Court Improvement Project for Child in Need of Assistance Cases: A Study of Iowa's Court Performance in Child Abuse and Neglect Cases and Plan for Improvement," State Court Administrator's Office, Iowa Supreme Court, September 1996, pp. 16–32.
268. Janice Waide and Robert Harder, "Impact of Court Appointed Special Advocates and Citizen Review Boards on Kansas Juvenile Courts," Midland Professional Services (Topeka, KS: October 1997), pp. 6–28.
269. Kentucky Court Improvement Project Evaluation Team, "Kentucky Court Improvement Project: First Year Assessment and Recommendations," February 1996, pp. 21–48.
270. *Ibid.*, p. 81.
271. Office of the Judicial Administration, "Court Improvement Program: Child Advocacy Resource Effort (CARE)," Supreme Court of Louisiana, July 1997, pp. 1–5. See also Daniel Kyle, "Louisiana Foster Care Court Process," Performance Audit Division, Office of the Legislative Auditor, December 1995, pp. xiii–iv.
272. The Committee to Study the Role of the Courts in Protecting Children, "Report of the Committee to Study the Role of the Courts in Protecting Children: Assessment of Child Protection Proceedings and Recommendations for Improvement," State of Maine, March 1997, pp. 21–35.
273. Anthony Dix and Randi Seiger, "Improving Court Performance for Abused and Neglected Children," Administrative Office of the Courts, State of Maryland, September 1997, pp. x–xi.
274. Grasso, *et al.*, p. 3.
275. Foster Care and Adoption Task Force, pp. 22–137.
276. Painter, p. 15.
277. Office of the Court Administrator, "Assessment and Recommendations for Improving Child Abuse and Neglect Proceedings in Montana Courts," Montana Supreme Court, December 1996, pp. 7–37
278. Office of the Court Administrator, p. 44.

279. Michael Bell, "Court Improvement Program: Assessments of Foster Care and Adoption Policies and Procedures in Selected District Courts of the State of Nevada: Final Report" (Carson City, NV: Administrative Office of the Courts, May 30, 1997), pp. 4–5.
280. Lyford, *et al.*, "New Hampshire Juvenile Court Improvement Project," pp. 10–65.
281. State Court Improvement Oversight Committee, "New Jersey Court Improvement Project: Annual Report," Administrative Office of the Courts, Family Division, October 3, 1996, Appendix B, p. 7.
282. State Court Improvement Oversight Committee, pp. 7–30.
283. The Administrative Office of the Courts of New Mexico, *et al.*, "Improving Outcomes for Abused and Neglected Children Through State Court Improvement," The Administrative Office of the Courts of New Mexico, July 1996, p. x.
284. The Administrative Office of the Courts of New Mexico, *et al.*, pp. x–xi, 13–78. New Mexico is one of a handful of states that also must deal with the complexities of tribal relationships in caring for Native American children; pp. 79–97.
285. Armstrong, *et al.*, pp. 9–14.
286. *Ibid.*, p. 12.
287. *Ibid.*, pp. 14–35.
288. Kaye and Lippman, p. 16.
289. Linda Powers, *et al.*, "Child Protection Proceedings in North Carolina Juvenile Courts," Research Triangle Institute, July 1996, p. 17.
290. *Ibid.*, p. 49.
291. *Ibid.*, p. 13.
292. Hurst, *et al.*, "Ohio Family Court Feasibility Study," p. 26.
293. *Ibid.*, pp. 71–83.
294. *Ibid.*, pp. 24–64.
295. Lahti, *et al.*, p. v.
296. *Ibid.*, pp. iv–vi.
297. *Ibid.*, p. vi. For much more detail on these and other assessments, see Lahti, *et al.*, pp. 32–127.
298. Hurst, *et al.*, "Pennsylvania Court Improvement Project Final Report," pp. 27–28.
299. *Ibid.*, p. 42.
300. Gwendolyn Lyford, *et al.*, "Rhode Island Family Court Assessment: Final Report," Court Services Division, National Center for State Courts, September 1995, p. 4.
301. *Ibid.*, pp. 5–24. See also Hardin, "Child Protection Cases in the Rhode Island Family Court," pp. 8–64; Hardin, "Child Protection Cases in a Unified Family Court," pp. 187–90.
302. Patricia Bond, "South Carolina's Court Improvement Study," Court Improvement Advisory Study, August 1997, pp. 91–114.
303. Cindy Wood MacLean and Rebecca Shea, "Tennessee Supreme Court Improvement Program for Juvenile Dependency Cases: An Assessment of Tennessee's Court Performance and A Plan for Improvements," Tennessee Supreme Court, August 1997, pp. 18–50.
304. *Ibid.*, pp. 51–56.
305. *Ibid.*, pp. 71–74.
306. *Ibid.*, p. 65.
307. Deloitte & Touche, pp. 23–37.
308. Utah Court Improvement Project Steering Committee, "Utah Court Improvement Project: Court Assessment and Recommendations for Improvement," Administrative Office of the Courts, January 1999, p. 27.
309. *Ibid.*, pp. 27–29.
310. Stephen Bouch, *et al.*, "Vermont Juvenile Court Improvement Project: Final Report," Court Services Division, National Center for State Courts, February 1997, pp. 24–81.
311. Rauber and England (1999), p. 249.
312. The Advisory Committee for the Virginia Court Improvement Program, p. 51.
313. *Ibid.*
314. Office of the Administrator for the Courts, "Guardian Ad Litem Project," State of Washington, August 1997, p. 17.
315. Office of the Administrator for the Courts, pp. 17–31.
316. West Virginia Court Improvement Oversight Board, pp. ES1–2, 29–68.
317. Martin, *et al.*, p. v.
318. *Ibid.*, pp. vi–ix.

319. Hooper and Gregory, pp. VIII-1 to VIII-8.
320. Rauber and England (1999), pp. 45–49. Training was also the leading strategy in prior years. Rauber and England (1998), p. 37.
321. Carns, pp. 141–60.
322. *Ibid.*, pp. 161–70.
323. *Ibid.*, pp. 177–84.
324. Di Pietro and Carns, p. 32.
325. *Ibid.*, pp. 32–39.
326. Rauber and England (1999), pp. 51–55. See also Rauber and England (1998), pp. 38–40.
327. Halemba and Siegel, pp. xii–xiv.
328. *Ibid.*, pp. xv–xvi.
329. Rauber and England (1999), pp. 57–61. These are consistent strategies. See Rauber and England (1998), pp. 41–43.
330. Arkansas Supreme Court Ad Hoc Committee, pp. 16, 22, 27, 33–34, 48–49, 52, 76–77, 87, 92, 97, 101, 104, 111, 116.
331. *Ibid.*, p. 120.
332. Rauber and England (1998), pp. 44–46.
333. *Ibid.*, p. 63.
334. *Ibid.*, pp. 63–66.
335. Bouch, *et al.*, "California Court Improvement Project Report," pp. 9–12.
336. Rauber and England (1998), pp. 48–51.
337. Rauber and England (1999), pp. 67–72.
338. Shera, pp. 11–12.
339. *Ibid.*, pp. 19–75.
340. Rauber and England (1998), pp. 51–53.
341. Rauber and England (1999), pp. 73–77.
342. Sahonchik, pp. 65–76.
343. Rauber and England (1999), pp. 79–82. See also Rauber and England (1998), pp. 54–56.
344. Miller, *et al.*, pp. 81–94. An alternative summary offered by the ABA included setting deadlines throughout the foster care process and guidelines for hearing lengths, employing time certain scheduling, adapting the national CASA model, increasing representation of parents, training judges, court personnel, and social workers, guiding participants through different investigative situations, eliminating inconsistencies in law and process, and developing a judicial bench book and new forms. Rauber and England (1998), pp. 59–61.
345. Rauber and England (1999), pp. 87–90. The earlier report focused on an assessment of problems to be addressed. Rauber and England (1998), pp. 59–61.
346. Court Improvement Project Advisory Committee, pp. iv–viii.
347. Rauber and England(1999), pp. 83–86; Rauber and England (1998), pp. 57–58.
348. Court Improvement Project Advisory Committee, pp. 9–13.
349. Office of the State Courts Administrator, p. 11.
350. *Ibid.*, pp. 11–15.
351. Rauber and England (1999), pp. 91–93.
352. Worthington, pp. 4–7.
353. Rauber and England (1999), pp. 95–98; Rauber and England (1998), pp. 65–67.
354. Bouch, *et al.*, "Hawaii Court Improvement Project: Final Report," pp. 5–7.
355. Rauber and England (1998), pp. 68–70.
356. *Ibid.*, pp. 99–101.
357. The Citizens Committee on the Juvenile Court Support Fund, p. 8.
358. *Ibid.*, p. 13.
359. Rauber and England (1998), p. 71.
360. Rauber and England (1999), pp. 103–06.
361. Rauber and England (1999), p. 106.
362. Indiana Supreme Court, pp. 25–27.
363. *Ibid.*, pp. 37–41.
364. Rauber and England (1999), pp. 107–08.
365. *Ibid.*, p. 75.
366. Rinkenberger, ed., pp. 19–32. These broad goals were backed by a more detailed implementation plan, which included suggestions for creating review task forces, amending laws and rules, offering training, and reviewing standards of representation. Rinkenberger, ed., pp. 35–47. Two other researchers also pushed training as a means of improving reasonable efforts oversight. Haney and Kay, p. 1686.
367. Rauber and England (1998), pp. 76–78.
368. Rauber and England (1999), pp. 109–113.
369. *Ibid.*, pp. 115–17; Rauber and England (1998), pp. 79–81.
370. Kentucky Court Improvement Project Evalu-

ation Team, pp. 82–85.
371. Rauber and England (1999), pp. 119–23; Rauber and England (1998), pp. 82–84.
372. Office of the Judicial Administrator, pp. 5–7.
373. Kyle, pp. xv–xvi.
374. Rauber and England (1999), pp. 125–29; Rauber and England (1998), pp. 85–87.
375. The Committee to Study the Role of the Courts in Protecting Children, pp. 9–15.
376. Rauber and England (1998), pp. 88–89.
377. Rauber and England (1999), pp. 131–34.
378. *Ibid.*, p. 134. The previous year the state included among its focus "the revision of statutes and rules" and "representation issues," Rauber and England (1998), p. 90.
379. Dix and Seiger, pp. 13–57.
380. Rauber and England (1999), pp. 135–39.
381. Rauber and England (1998), p. 92.
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383. Rauber and England (1998), pp. 94, 96.
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